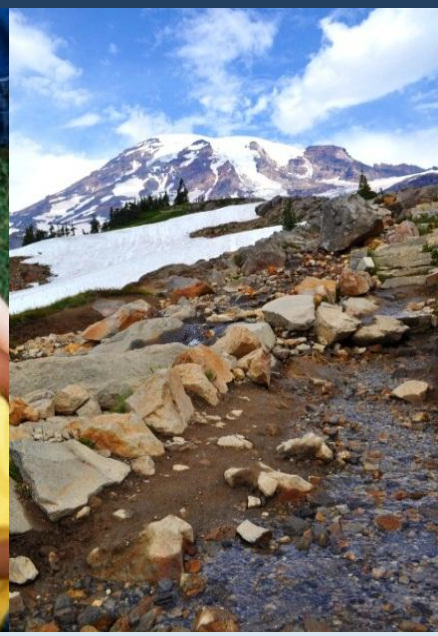
Child Support Schedule Workgroup

September 2015



RECOMMENDATIONS TO THE WASHINGTON STATE LEGISLATURE FOR WASHINGTON'S CHILD SUPPORT SCHEDULE PURSUANT TO RCW 26.19.025

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Executive Summary

In 2007, the Washington Legislature adopted 2SHB 1009,[1] which amended RCW 26.19.025 and established a process for performing the federally-required quadrennial review of the state's child support guidelines[2] by creating a Workgroup tasked to review current laws, rules, and practices regarding child support. Prior to that, Washington law called for a review, but did not specify how that review should be carried out.[3]

Starting in 2011 and every four years thereafter, RCW 26.19.025 provides that the DSHS Division of Child Support (DCS) must convene a new Workgroup whose non-legislative members are to be appointed by the Governor. DCS is required to provide staff support for the Workgroup.

The President of the Senate and the Speaker of the House of Representatives are each to appoint two members, one from each of the two largest caucuses of those bodies. The statute does not provide a list of issues to be considered by these ongoing Workgroups, but it is anticipated that each Workgroup will select its own issues, based on a report which reviews and analyzes data collected from support orders entered since the last review, prior Workgroup reports, the current child support guidelines, and other relevant research and data regarding the cost of child rearing, as well as research and data on the application of, and deviations from, the child support guidelines.

The 2015 Child Support Schedule Workgroup

The first meeting of the 2015 Child Support Schedule Workgroup was held on January 23, 2015, in Tumwater. The Workgroup continued to meet on a monthly basis, for a total of nine in-person meetings and one meeting by conference call. Each meeting of the Workgroup was open to the public, and the agenda for each meeting contained a time for receiving public comments.

The 2015 Workgroup also formed *ad hoc* Subcommittees to research and report on specific issues, making recommendations to help the entire Workgroup come to more informed final decisions.

The Subcommittees met by conference call; those calls were open to all Workgroup members.[4] Each Subcommittee was tasked to make recommendations to the Workgroup, or to provide information on those issues on which the Subcommittee had been unable to reach consensus.

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[1] Chapter 313, Laws of 2007.
[2] 45 CFR 302.56(e).
[3] Prior to 2007, RCW 26.19.025 in its entirety stated: "The legislature shall review the support schedule every four years to determine if the application of the support schedule results in appropriate support orders."
[4] All meetings of the Workgroup and its Subcommittees, whether in-person or by conference call, were open to the public.

The Workgroup's website[5] contains the agendas for, and minutes of, all Workgroup meetings. The Workgroup Calendar[6] provides time, date and location information for Workgroup meetings and Subcommittee conference calls. When available, notes from the Subcommittee conference calls are posted on the Workgroup website. Each Subcommittee has its own section on the Materials page.[7]

The attached recommendations of the 2015 Child Support Schedule Workgroup are the result of an intense, collaborative process of committed volunteer Workgroup members. Members included both noncustodial parents and custodial parents, a law professor, an economist and a tribal child support staffer, as well as representatives of the state bar association, the Washington Association of Prosecuting Attorneys, legal services, the Office of Administrative Hearings, the courts, and the Legislature.

The Workgroup encouraged public participation in their process. Workgroup meetings and Subcommittee meetings were open to the public. Individuals who appeared at meetings were invited to provide their comments at some time during each meeting. DCS created a website[8] and a listserv,[9] and set up an e-mail address for anyone wishing to submit comments for consideration by the Workgroup.[10] The Workgroup held two special two-hour sessions dedicated to public comment: one in Spokane (August) and one in Seattle (September).

Prioritization of Issues to be Addressed

The 2015 Child Support Schedule Workgroup reviewed the Report of the 2011 Workgroup[11] as well as House Bill 1037,[12] introduced in the 2015 session to implement the 2011 consensus recommendations.[13] The 2015 Workgroup members identified the one issue they wanted to concentrate on: a residential schedule deviation based on the time that the children spend with the paying parent. Initially, the 2015 Workgroup decided not to rehash the recommendations of the 2011 Workgroup because of the pending bill, and preferred to focus on an issue that was not included in HB 1037.

[5] https://www.dshs.wa.gov/esa/division-child-support/2015-child-support-schedule-workgroup
[6] https://www.dshs.wa.gov/sites/default/files/ESA/dcs/documents/15050815CSWGCalendar.pdf
[7] https://www.dshs.wa.gov/esa/division-child-support/2015-child-support-schedule-materials
[8] https://www.dshs.wa.gov/esa/division-child-support/2015-child-support-schedule-workgroup
[9] http://listserv.wa.gov/cgi-bin/wa?A0=SUPPORTSCHEDULEWORKGROUP
[10] SupportSchedule@dshs.wa.gov
[11] https://www.dshs.wa.gov/sites/default/files/ESA/dcs/documents/finalreportofworkgroup2011.pdf
[12] House Bill 1037 was introduced in the 2015 legislative session (http://apps.leg.wa.gov/billinfo/summary.aspx?bill=1037&year=2015#documents)
[13] Previous bills proposed to implement the recommendations of the 2011 Workgroup included HB 2279, introduced in the 2012 session; HB 2279 apparently failed to pass because it included provisions regarding a residential schedule adjustment which were determined to be too complicated and hard to implement. HB 1027, introduced in the 2013 session, removed the provisions dealing with the residential schedule adjustment, was passed by the House but never got a hearing in the Senate.

Four Subcommittees were established to focus on different aspects of a residential schedule revision:

- Whether the residential schedule revision should be an adjustment or a deviation;
- Whether a residential schedule deviation should be dependent on whether there was an existing residential schedule or parenting plan;
- What unit of measurement should be used to determine whether a residential schedule deviation should be granted; and
- What formula should be used to calculate the residential schedule deviation.

Final Recommendations of the 2015 Child Support Schedule Workgroup

As was the case with prior Workgroups, the 2015 Workgroup's main concern was that whatever child support schedule is ultimately adopted, it must:

- Be clear and easy to understand.
- Be easy to implement.
- Provide certainty and consistency while allowing flexibility to deal with unjust or inappropriate outcomes.
- Cover the greatest possible number of families.
- Provide specific guidelines.

The 2015 Workgroup's ground rules provided that the group would work to arrive at a consensus.[14] The working definition for consensus was "Consensus means that a member may not agree with the position, but can live with it. Where that is not possible we will determine the majority and minority views."

Although the Workgroup was unable to reach consensus on every point, the members thoroughly discussed all issues considered. Where consensus was not reached, the Workgroup attempted to narrow down the options and point out the advantages and disadvantages of each approach.

In the end, the 2015 Workgroup agreed by consensus to the following recommendations, which are described here in summary:

Recommendation One: There should be a formula based on the residential schedule of the children for whom support is being set.

Recommendation Two: The residential schedule deviation should be available in both the court and administrative processes.

Recommendation Three: There should be rules on when the residential schedule deviation may not be applied.

- The residential schedule deviation should not be applied if it would result in insufficient funds in the recipient's household, if the self-support reserve is being applied to either party, or if the children receive TANF.

[14] The 2015 Workgroup's Ground Rules are set forth in Appendix VI.

Recommendation Four: The statute should specify how and when the residential schedule deviation is to be calculated.

- If the deviation is granted, then the calculation of the deviation should be based upon a specific formula.
- In statute, the formula should be expressed as a table, not just a formula.
- The deviation should be applied to the basic child support obligation, and not the standard calculation.

Recommendation Five: These recommendations require revision of the existing WSCSS Worksheets.

- There should be a new line added to the "Additional Information Calculations" section of the WSCSS worksheet (part VII) in order to show the dollar amount of the residential schedule deviation.
- The WSCSS Worksheet should not automatically apply the residential schedule deviation.

Recommendation Six: The Workgroup recommends that, if the parent receiving the residential schedule deviation does not spend time with the children in the same amount as used as the basis for the deviation, then there should be enforcement remedies available.

- The deviation should be removed, or at least adjusted, if the parent spends less time with the children than contemplated.
- The deviation should be increased if the parent spends more time with the children than contemplated.
- There should be the option to bring a contempt action for failure to follow the residential schedule that led to the deviation in the child support order.
- Any support order granting a residential schedule deviation should contain warnings advising the parties about what can happen if the residential schedule is not followed.

Recommendation Seven: The workgroup recommends that the statute be clarified to offer more guidance as to how to calculate the basic support obligation for the low income parent.

The statute should be clarified so that neither parent's basic support obligation owed for all of his or her biological or legal children may reduce that parent's income below the self-support reserve of 125% of the federal poverty guideline for a one person household unless it would be unjust. Each child is entitled to a pro rata share of the income available for support (but not less than $50.00 per child per month). The court only applies the pro rata share to the children in the case before the court.

Recommendation Eight: The Workgroup endorses two recommendations of the 2011 Child Support Schedule Workgroup:

- The revised Economic Table should be adopted.
- The language regarding the Self-Support Reserve should be clarified to say that, no matter how many people resided in each household, the Self-Support Reserve is based on 125% of the Federal Poverty Level for a one-person household.

Conclusion

The Workgroup's recommendations contained within this Report are the culmination of months of effort by thoughtful individuals who took into consideration their own experience and expertise with the child support schedule while evaluating comments from the public and other interested parties, and reviewing the research and reports that were made available to them regarding the Washington State Child Support Schedule.

Where the Workgroup was able to reach a consensus or majority opinion, we respectfully urge the Legislature to consider adopting the proposals set forth in this report. Where the Workgroup was unable to reach a consensus, we hope that our discussion of the different options is helpful.

Background

Federal Requirements Regarding Child Support Schedules

As a condition for states receiving federal money to run their child support program, 42 USC §667(a) requires states to enact child support guidelines for setting child support awards. The law requires that the guidelines be reviewed at least every four years to ensure that their application results in appropriate child support award amounts. The requirements for the four-year review are further defined in 45 CFR §302.56. As part of the review, the state must take into consideration:

> …economic data on the cost of raising children and analyze case data, gathered through sampling or other methods, on the application of, and deviations from, the guidelines. The analysis of the data must be used in the State's review of the guidelines to ensure that deviations from the guidelines are limited.[15]

Washington State's Child Support Schedule History[16]

- 1982: The Washington State Association of Superior Court Judges (ASCJ) approved the Uniform Child Support Guidelines, which recognized the equal duty of both parents to contribute to the support of their children in proportion to their respective incomes. Most counties adopted ASCJ guidelines, but others promulgated their own.
- 1984: The federal Child Support Enforcement Amendments of 1984 required states to establish child support guidelines, which were made available to judicial and administrative officials, but were not binding. The setting of child support through a statewide schedule was intended to standardize the amount of support orders among those with similar situations.
- 1986: The Governor's Task Force on Support Enforcement examined the ASCJ Guidelines and recommended that a statewide child support schedule be established, using gross income and a schedule be followed unless certain exceptional situations defined by the enabling statute were established. (Final Report, Sept. 1986).
- 1987: Legislation was introduced to the House to create a statewide child support schedule. The Legislature rejected a rebuttable presumption support schedule proposed by the Governor's Task Force on Support Enforcement. On May 18, 1987, Gov. Gardner signed SHB 418,[17] creating the Washington State Child Support Schedule Commission and setting guidelines by which the

[15] 45 CFR §302.56(h).
[16] Provided by the Division of Child Support's Management and Audit Program Statistics Unit (MAPS)
[17] Laws of 1987, Chapter 440.

Commission was to propose a statewide child support schedule to take the place of county support schedules by Nov. 1, 1987. The Commission was specifically directed by the Legislature to propose a schedule after studying the following factors:

1) Updated economic data

2) Family spending and the costs of raising children

3) Adjustments based upon the children's age level

4) The basic needs of children

5) Family size

6) The parents' combined income

7) Differing costs of living throughout the state

8) Provision for health care coverage and child care payments

- 1987: The Legislature created the Washington State Child Support Schedule Commission, comprised of an economist, representatives from parents' groups, attorneys, a judge and a court commissioner. Child support agency staff served as support staff to the Commission. The Commission was charged with reviewing and proposing changes to the support schedule when warranted.
- 1988: Recommendations from the Child Support Commission were adopted July 1, 1988 by the Legislature, establishing a state schedule for determining child support codified at Chapter 26.19 RCW.[18] The federal Family Support Act in 1988 made the guidelines presumptive rather than advisory. The Legislature adopted the rebuttable-presumption statewide child support schedule proposed by the Commission and gave the Commission authority to make revisions subject to the approval of the Legislature.[19]

  1) The January 26, 1988 support schedule contained standards for setting support, worksheets, instructions and the basic obligation table.

  2) The July 1, 1988 support schedule changed the "basic obligation table" to the "economic table."

  3) In November 1988, the Commission proposed changes, accepted by the 1989 Legislature and effective July 1, 1989. The major change was the inclusion of ordinary health care expenses in the economic table to be paid by the payee parent. A formula was provided to determine that amount.[20]

- 1989: The Child Support Commission issued recommendations on applying the schedule to blended families.[21] The 1989 support schedule included standards for setting support, instructions, the economic table and worksheets.

[18] Chapter 275, 1988 Laws.
[19] Chapter 26.19 RCW and schedule dated July 1, 1988.
[20] Report dated November 1988 and schedule dated July 1, 1989.
[21] Report on the Use of Support Schedule for Blended Families, December 1989.

- 1990: The Legislature attempted to change the way overtime pay, second (or multiple) families and a few other items are treated in the schedule.[22] The Governor vetoed the attempted amendments on those major issues. That bill made no changes to the economic table itself, but did significantly impact its use.

    1) RCW 26.19.020 was amended to provide that any county superior court could adopt an economic table that varied no more than twenty-five percent from that adopted by the Commission for combined monthly net income of over $2,500.

    2) The bill required that the Child Support Order Summary Report Form be completed and filed with the county clerk in any proceeding where child support is established or modified.

    3) RCW 26.19.035 was amended to provide that child support worksheets are to be completed under penalty of perjury, and the court is not to accept incomplete worksheets or worksheets that vary from the worksheets developed by the Administrative Office of the Court.

    4) The moving force behind the attempted changes in 1990 was an organization called Parents Opposed to Punitive Support (POPS), which consisted primarily of noncustodial parents with multiple families. POPS announced that they would continue their efforts with the 1991 Legislature, and also brought an unsuccessful lawsuit against the Office of Support Enforcement (OSE, now DCS) to gain access to judges' records on child support that had been collected for a study of child support orders.

- The September 1, 1991 support schedule[23] eliminated the residential credit (standard 10) in determination of child support and substituted the residential schedule as a standard for deviation.

    1) The Legislature made other changes including amendments to RCW 26.19.020 to mandate a uniform statewide economic table based on the Clark County model.

    2) The table is presumptive up to $5000, and advisory up to $7000.

- 2007: Substitute House Bill 1009,[24] based in part on the recommendations contained in the Report of the 2005 Workgroup, established a process for the quadrennial review of the child support guidelines.

    1) This bill provided that the child support order summary report be added to the first page of the Washington State Child Support Schedule Worksheet, developed by the Administrative Office of the Courts.

    2) The order summary report form was required to include "all data the department of social and health services division of child support has

[22] EHB 2888 (Chapter 2, Laws of 1990, 1st ex.s.).
[23] Chapter 367, Laws of 1991.
[24] SHB 1009 (Chapter 313, Laws of 2007)

determined necessary, in order to perform the required quadrennial review of the Washington state child support guidelines."

- 2007: the first Child Support Schedule Workgroup under revised RCW 26.19.025 was convened and filed its *Report to the Legislature* on December 30, 2008.[25]
- 2009: Based on the Report of the 2007 Child Support Schedule Workgroup, the Legislature adopted ESHB 1794,[26] which made the first major changes to the Washington Child Support Schedule in almost 20 years.[27]
- 2011: the 2011 Child Support Schedule Workgroup was convened in January 2011 and submitted its *Report to the Legislature* on September 30, 2011.[28] Although several bills were proposed based on the recommendations of the 2011 Workgroup, no changes to Chapter 26.19 RCW have been passed by the Legislature.
- 2015: the 2015 Child Support Schedule Workgroup was convened in January 2015.

Washington's child support schedule is based on the Income-Shares Model developed by Robert Williams[29] in 1987, which at that time was used in 33 states. It is based on the combination of incomes of both parents to estimate the proportion that would be spent on children in an intact family. After all factors are considered, the noncustodial parent is ordered to transfer child support to the parent with whom the child resides a majority of the time.

At the time of the development of the statewide child support schedule, there was considerable attention given to the issue of whether the schedule reflected the appropriate level of support for children. The focus of the discussion, however, turned to the issue of the hardship the schedule imposed on the nonresidential parent rather than the well-being of the child.

The fathers' rights activists expressed concern that the schedule was too high. A comparative report[30] indicated that the support schedules of income shares states tended to cluster closer to the lower bound of the range of estimates of expenditures on children than they did to the upper bound on the range of estimates. Further, no state that had adopted the income shares model required the noncustodial parent to pay more in child support than would have been spent to support the child in an intact family.

[25] https://www.dshs.wa.gov/sites/default/files/ESA/dcs/documents/finalreportofworkgroup.pdf
[26] ESHB 1794 (Chapter 84, Laws of 2009)
[27] Those changes are discussed *infra*.
[28] https://www.dshs.wa.gov/sites/default/files/ESA/dcs/documents/finalreportofworkgroup2011.pdf
[29] Robert Williams, 1987, *Development of Guidelines for Child Support Orders: Advisory Panel Recommendations and Final Report.*
[30] Laurie Bassi, Laudan Aron, Burt S. Barnow, and Abhay Pande, 1990, *Estimates of Expenditures on Children and Child Support Guidelines,* U.S. Department of Health and Human Services.

History of Child Support Schedule Reviews in Washington State[31]

The presumptive child support schedule was enacted in 1988. The first comprehensive review of the support schedule was initiated in 1993. The chairs of the House Judiciary Committee and the Senate Law and Justice Committee asked the Washington State Institute for Public Policy (WSIPP) to conduct a study of the Washington State Child Support Schedule. The study[32] was issued in March 1995. The study found that Washington's support guidelines fell within the median level of the range for raising children at the time. Based on that report, the Legislature did not act to make any changes to the support schedule at that time.

During the 2003 legislative session, the Department of Social and Health Services' Division of Child Support (DCS) provided the Speaker of the House of Representatives and the Majority Leader of the Washington State Senate with a copy of a report by Kate Stirling, Ph.D, suggesting that a review of the support schedule was necessary.[33] In addition, DCS submitted a letter requesting that the Legislature review the support schedule as required under RCW 26.19.025, 42 USC §667(a), and 45 CFR §302.56. Section 207(8) of the Supplemental Operating Budget for the state's fiscal year 2002-2003 contained the following language:

> In reviewing the budget for the division of child support, the legislature has conducted a review of the Washington state child support schedule, chapter 26.19 RCW, and supporting documentation as required by federal law. The legislature concludes that the application of the support schedule continues to result in the correct amount of child support to be awarded. No further changes will be made to the support schedule or the economic table at this time.[34]

Then in February of 2005, DCS received a letter from the Regional Administrator of the Federal Office of Child Support Enforcement (OCSE) indicating that the child support guidelines had not been reviewed as required by 45 CFR 302.56, and warning that Washington state's child support plan might be disapproved if the review did not occur.[35]

As a result of this warning, Governor Gregoire directed DCS to put together a workgroup to make recommendations to the Legislature no later than January 15, 2006.[36] The Governor directed that the 2005 Workgroup provide a report that contained recommendations for needed amendments to the child support guideline statutes, a process for improving record keeping of orders entered, and a better method of ensuring that the child support guidelines are reviewed and updated as federally required. As part

[31] Taken in large part from the Report of the 2007 Child Support Schedule Workgroup.
[32] *Child Support Patterns in Washington State: 1993-1994*, by Steve Aos and Kate Stirling.
[33] *A Review of the Washington State Child Support Schedule, March 2003, Completed under Contract for the Washington State Division of Child Support.*
[34] SSB 5403 (Chapter 10, Laws of 2003).
[35] Failure to have an approved state child support plan could result in the loss of all federal funding for the child support program (roughly $85 million per year) and loss of up to 5% of the $400 million in the Temporary Assistance for Needy Families (TANF) funding.
[36] This workgroup is referred to as "the 2005 Workgroup."

of the review, DCS contracted with Policy Studies, Inc., to do a review and analysis of the support schedule in compliance with 45 CFR 302.56(e) and (h). The 2005 Workgroup delivered its Report to the Governor and the Legislature in January 2006.[37] Although several consensus items were included in that report, the Legislature made no changes to the child support schedule in the 2006 legislative session.

However, in the 2007 legislative session, the Legislature amended RCW 26.19.025 and established workgroups to "periodically review and update the child support schedule."[38]

- The bill required the Division of Child Support to convene a Workgroup no later than August 1, 2007.[39]
- This Workgroup was tasked to "continue the work of the 2005 child support guidelines workgroup, and produce findings and recommendations to the Legislature, including recommendations for legislative action, by December 30, 2008."
- The 2007 Workgroup was given fourteen specific issues to consider,[40] and delivered its Report to the Legislature[41] on December 30, 2008.

In the 2009 legislative session, the Legislature adopted ESHB 1794,[42] which was based on the Report of the 2007 Child Support Schedule Workgroup.[43] ESHB 1794 made the first major changes to the Washington Child Support Schedule in almost 20 years. That bill:

- Expanded the Economic Table up to a combined monthly net income (CMNI) of $12,000, which covered families with combined annual gross incomes of approximately $200,000.
- Provided that for combined monthly net income (CMNI) of less than $1000, the obligation is "based upon the resources and living expenses of each household," and minimum support may not be less than $50 per child per month except when allowed under RCW 26.19.065(2).
- Provided that the Economic Table is presumptive for CMNI up to and including $12,000, and that when CMNI exceeds $12,000, the court may exceed the presumptive amount of support set for CMNI of $12,000 upon written findings of fact.
- Removed the presumption that the basic support amounts in the Economic Table included a certain amount for health care expenses.
    - Prior to this time, RCW 26.19.080 provided that 5% of the basic support obligation represented "ordinary health care expenses" of the children, and that "extraordinary health care expanses," defined as costs that exceed 5% of the basic support obligation, were to be shared proportionally by the parents.

[37] https://www.dshs.wa.gov/esa/division-child-support/reports
[38] 2SHB 1009 (Chapter 313, Laws of 2007)
[39] Section 7 of 2SHB 1009 (Chapter 313, Laws of 2007)
[40] Section 7 of 2SHB 1009 (Chapter 313, Laws of 2007)
[41] https://www.dshs.wa.gov/sites/default/files/ESA/dcs/documents/finalreportofworkgroup.pdf
[42] ESHB 1794 (Chapter 84, Laws of 2009)
[43] https://www.dshs.wa.gov/sites/default/files/ESA/dcs/documents/finalreportofworkgroup.pdf

    - ESHB 1794 provided a definition of health care costs, and provided that they are not included in the Economic Table but are to be shared by the parents in the same proportion as the basic child support obligation.
- Added language intended to clarify the application of the limitation in RCW 26.19.065(1) providing that neither parent's child support obligation owed for all his or her biological or legal children may exceed 45% of net income except for good cause shown.
- Increased the presumptive minimum support obligation to fifty dollars per month per child.
- Provided that the basic support obligation of the parent making the transfer payment, excluding health care, day care, and special child-rearing expenses, shall not reduce his or her net income below the self-support reserve of one hundred twenty-five percent of the federal poverty level, except for the presumptive minimum obligation.
- Made changes to the provisions regarding which income sources are to be included in, or excluded from, a parent's gross monthly income.
- Established a hierarchy for the imputation of income in the absence of actual earnings.

As discussed elsewhere in this Report, the 2011 Child Support Schedule Workgroup made several consensus recommendations which have not been implemented by the Legislature.

The Current Schedule Review under RCW 26.19.025

Starting in 2011 and every four years thereafter, the DSHS Division of Child Support (DCS) was directed to convene a Workgroup "to review the child support guidelines and the child support review report prepared under RCW 26.19.026 and determine if the application of the child support guidelines results in appropriate support orders."[44] The membership of these future Workgroups was to be the same as required for the 2007 Workgroup. As indicated above, the statute did not set out specific issues for Workgroups other than the 2007 Workgroup to consider. Starting with the 2011 Workgroup, RCW 26.19.025(6) directs each Workgroup to "report its findings and recommendations to the legislature, including recommendations for legislative action, if necessary."

Members of the 2015 Workgroup

The Speaker of the House of Representatives appointed Representative Christine Kilduff (D-28th District) and Representative Dave Hayes (R-10th District). The President of the Senate appointed Senator Christine Rolfes (D-23rd District), who was then replaced by Senator Jeannie Darneille (D-27th District); there was no Republican Senator appointed to the 2015 Workgroup.

[44] RCW 26.19.025(1).

The Governor, in consultation with the Division of Child Support, appointed the remaining members of the Workgroup:

- Wally McClure, the Director of the Division of Child Support. The Governor appointed Mr. McClure as the Chair of the 2015 Workgroup.

- Inga Laurent, a professor of law specializing in family law, from Gonzaga University School of Law.

- Charles Szurszewski, a family law practitioner nominated by the Washington State Bar Association's Family Law Executive Committee (FLEC).

- Dr. Robert Plotnick, an economist from the University of Washington

- Kala Jackson, of the Quileute Tribe, a representative of the tribal community (the Governor originally appointed Deanna Muir of the Tulalip Tribes; when Ms. Muir resigned from the Workgroup, Ms. Jackson was appointed to the position).

- Judge Richard Okrent of Snohomish County and Commissioner Tami Chavez of Spokane County were nominated by the Superior Court Judges' Association.

- Merrie Gough, nominated by the Administrative Office of the Courts (AOC).

- Kevin Callaghan, of the Yakima County Prosecuting Attorney's Office, nominated by the Washington Association of Prosecuting Attorneys (WAPA).

- Kristofer Amblad, nominated by legal services.

- Ami Abuan, an administrative law judge (ALJ) nominated by the Office of Administrative Hearings (OAH).

Three noncustodial parents:

- Nathaniel Hildebrand, Steven Larson and David Brown (John Rowley was originally appointed by the Governor; when Mr. Rowley resigned from the Workgroup, Mr. Brown was appointed on April 30, 2015).

Three custodial parents:

- Julirae Castleton, Melora Sharts and Coti Westby.

Overview of Process

Workgroup Meetings

The first meeting of the 2015 Child Support Schedule Workgroup was held on January 23, 2015. The Workgroup continued to meet in-person on a monthly basis. The final "working" meeting of the Workgroup was held on September 19, 2015.

The majority of the in-person meetings for the 2015 Workgroup were held at the Headquarters Building of the Department of Labor & Industries in Tumwater, Washington. The Seattle Field Office of the Division of Child Support (DCS) hosted the June meeting, the August meeting was held in Olympia at DCS Headquarters, and the final Workgroup meeting was held at North Seattle College.

There were two meetings dedicated to a public forum (see below), one in Spokane at Gonzaga Law School, and one in Seattle at North Seattle College. Four subcommittees were created and they met by conference call between Workgroup meetings and during part of the April, June and July meetings.

Each Workgroup member was presented with a notebook of materials, and there were many materials available on the Workgroup's website. Materials included research material prepared by DCS staff, the 2014 Child Support Order Review prepared by Teri Lane of the Economic Services Administration of DSHS (called "the Washington State 2014 Child Support Order Review"), and a copy of the Report of the 2007 and 2011 Workgroups. These materials were supplemented with various additional materials created by DCS staff, Lane or Workgroup members. These materials and others submitted by Workgroup Subcommittees or members of the public were also posted on the Workgroup's website.[45]

Public Participation

The Division of Child Support provided several resources to make information on the 2015 Child Support Schedule Workgroup and its deliberations available to the public.

- DCS established a website for the 2015 Workgroup[46] and posted agendas, meeting minutes, and other information including materials prepared by DCS staff or Workgroup members, and sometimes materials submitted by members of the public.
- DCS created a listserv[47] as a broadcast list with open subscription. This type of listserv is open to anyone, and is used only to send out notices, not as a discussion portal.

[45] https://www.dshs.wa.gov/esa/division-child-support/2015-child-support-schedule-materials
[46] https://www.dshs.wa.gov/esa/division-child-support/2015-child-support-schedule-workgroup
[47] http://listserv.wa.gov/cgi-bin/wa?A0=SUPPORTSCHEDULEWORKGROUP

- DCS created an e-mail address[48] for anyone to use for providing comments to the Workgroup. Messages received in that email box that dealt with child support, the schedule, or Workgroup issues were forwarded to the entire Workgroup, and those messages were distributed on the Support Schedule listserv.
- At each meeting, members of the public and interest groups were invited to attend. Time was set aside during each meeting to allow members of the public to address the Workgroup members.[49]
- Subcommittee meetings were held by conference call and members of the public were encouraged (on the website and by listserv) to call in and listen to the discussions.

The Charge of the 2015 Workgroup

The legislative mandate for the 2015 Workgroup did not require the Workgroup to address specific issues, but merely to "review the child support guidelines and the child support review report prepared under RCW 26.19.026 and determine if the application of the child support guidelines results in appropriate support orders."

Prioritization of Issues

The Workgroup members decided that the most important issue to focus on was one left without a resolution by the 2011 Workgroup, namely, a way to implement a Residential Schedule Deviation.

Public Forums

From the beginning the 2015 Workgroup was committed to having this process be an open process, including opportunities for public input. To help accomplish this goal, two public forums were organized and held. The Workgroup held one forum in Seattle and one in Spokane, in order to get input from members of the public in urban centers in both Eastern and Western Washington.

At each "public forum," two hours were dedicated to hear concerns from members of the public. The Spokane public forum was held during the evening of Wednesday, August 26; the Seattle public forum was held on Saturday morning, September 19. Each public forum continued for as long as there were people who wanted to address the Workgroup. A number of DCS staff members[50] attended each public forum in case any attendees wanted to talk to representatives from DCS about specific case problems. Not everyone who attended addressed the Workgroup, but everyone who wished to address the Workgroup was given the opportunity.

[48] SupportSchedule@dshs.wa.gov
[49] Normally, a public comment period of fifteen to thirty minutes was allocated on the agenda, but all members of the public who wished to address the Workgroup were given an opportunity.
[50] DCS staff included support enforcement officers from the local field office, as well as staff from the DCS Headquarters Community Relations Unit and the DCS conference board unit.

The first public forum was held August 26, 2015, at the Gonzaga Law School in Spokane; this was scheduled to run from 7 pm until 9 pm. There were no members of the public in attendance, except for the spouse of one Workgroup member and a friend of another member. Nonetheless, Chair McClure introduced the members of the Workgroup and gave a brief presentation on the tentative Workgroup recommendations. Nobody asked to address the Workgroup, so the Workgroup members in attendance took the opportunity for an informal discussion of various issues in the same room where the public forum was held. No additional members of the public appeared that evening. The public forum was adjourned at approximately 8:40 pm.

The second public forum was held September 19, 2015, at North Seattle College; this forum was scheduled to run from 9 am until 11 am, with the Workgroup's final meeting scheduled afterward from 11:30 am until 3 pm. There were six members of the public at this public forum. Chair McClure introduced the members of the Workgroup and gave a brief presentation on the tentative Workgroup recommendations. After everyone who wanted to do so had an opportunity to address the Workgroup, the Chair invited everyone present to participate in an informal discussion of child support schedule issues. The public forum was adjourned at approximately 9:40 am, and the starting time for the Workgroup meeting was adjusted to 10:15 am in the same room where the public forum was held. No additional members of the public appeared, although some of those who attended the public forum stayed for at least part of the meeting.

Subcommittees

The 2015 Workgroup realized that they would need subcommittees to do the homework to study and discuss certain facets of a residential schedule deviation and then make recommendations to the larger group. The subcommittees met by conference call and were facilitated by a DCS staff member. All members of the Workgroup were welcome to attend any subcommittee meeting, and several members did so. The subcommittee conference calls were publicized on the Workgroup's website and the listserv, and members of the public were able to call in and listen to the meetings.[51]

Membership on the subcommittees varied throughout the duration of the Workgroup. Initial membership on the four subcommittees was as follows:

- Adjustment vs. Deviation This subcommittee was chaired by Nathaniel Hildebrand and facilitated by DCS staffer Janina Oestreich. Members were ALJ Ami Abuan, Kevin Callaghan, Commissioner Tami Chavez, Nathaniel Hildebrand, Steve Larson and Coti Westby.
- Parenting Plans Merrie Gough chaired the subcommittee, which was facilitated by DCS staffer Matt Parascand. Members were Kris Amblad, Julierae Castleton,

[51] As time permitted, the chair of each subcommittee solicited input from members of the public during the conference call. Unlike prior workgroups, few members of the public participated in the 2015 Workgroup's subcommittee conference calls.

Merrie Gough, Kala Jackson, Representative Christine Kilduff, Professor Inga Laurent and Judge Richard Okrent.

- Unit of Measurement Charles Szurszewski chaired the subcommittee, which was facilitated by DCS staffer Matt Parascand. Members were Steven Larson, Wally McClure, Professor Robert Plotnick, Melora Sharts and Charles Szurszewski.
- Formula Professor Robert Plotnick chaired this subcommittee, which was facilitated by DCS staffer Matt Parascand. Members were Commissioner Tami Chavez, Judge Richard Okrent, Professor Robert Plotnick, Melora Sharts, Charles Szurszewski, and Coti Westby.

The subcommittees were appointed at the March meeting. Starting in May, each subcommittee was scheduled to give a monthly report to the Workgroup to keep all Workgroup members aware of what issues were being considered, and what kind of input the subcommittee wanted from the Workgroup as a whole. Workgroup members were also given the opportunity to suggest additional issues the subcommittee should consider.

Recommendations

The recommendations of the 2015 Child Support Schedule Workgroup are described in the following section. Although the Workgroup did not reach consensus on all of the issues, each of the issues was discussed and various points of view were considered regarding each one.

Recommendations of the 2015 Child Support Schedule Workgroup

RECOMMENDATION ONE

Recommendation One: There should be some sort of formula based on the residential schedule of the children for whom support is being set.

- The unit of measurement for determining the residential schedule deviation should be the number of overnights that the children spend with each parent.
- There should be no minimum number of overnights required before a residential schedule deviation may be applied.

The Workgroup agreed by a strong majority vote that the residential schedule deviation should remain a deviation. A minority of the Workgroup felt the revision should be applied as an adjustment. It should be noted that many Workgroup members support of the various consensus points was contingent on the residential schedule revision in fact being a deviation.

Background for Recommendation One:

The Workgroup agreed that when the children spend a significant amount of time in both parents' homes, both parents have expenses when the children are residing with them. These additional expenses, the Workgroup felt, should be recognized by a reduction in the amount of the paying parent's monthly transfer payment.

The added expenses, the Workgroup felt, could vary determining how much time the children spent with each parent. For instance, although one could assume that children who spend very little time with the paying parent wouldn't each need a private bedroom dedicated to their own use, it can be argued that the more time that the children spend in that parent's home, the higher the need for permanently available sleeping and living area.

It also was agreed that no matter how much time the children spent with the paying parent, there would be increased expenses in that household for food and other incidentals that would not be incurred if the children were not there. On the other hand, there was no agreement that the children's absence from the custodial parent's home always results in the same amount of decreased expenses. Many Workgroup members felt that most of the custodial parent's household expenses remain the same no matter how much time the children spend with the other parent.

No matter how much time the children spent in each household, the Workgroup agreed that the "typical" residential schedule from the time the Washington State Child Support Schedule (WSCSS) was adopted has changed. Over the years, most families have parenting plans or residential schedules that give a significant amount of time to the paying parent, and 50-50 schedules, where the children spend an equal amount of time in each home, have become much more popular. The Workgroup recommends that the concept of the residential schedule deviation be updated to reflect current trends in parenting plans and residential schedules.

Discussion of Recommendation One:

What Unit of Measurement Should be Used?

The "Unit of Measurement" Subcommittee recommended to the Workgroup that the unit of measurement for determining the residential schedule deviation should be the number of overnights that the children spend with each parent. The Workgroup then adopted this as a consensus recommendation.

While recognizing that there are many approaches to calculating a residential schedule deviation, the Workgroup decided that the easiest method for determining the deviation would be a method based on the number of overnights which the child spends with each parent.

Although there are some family situations which would not fit nicely into the "overnights" scenario, the Workgroup members believed that the majority of cases would be amenable to such a calculation method for the residential schedule deviation.

Should there be a threshold before the residential schedule deviation is allowed?

The Workgroup members had many discussions on how many overnights would qualify a parent for a residential schedule adjustment. Any minimum number of overnights required is often referred to as the" threshold" number. Opinions put forward ranged from no threshold at all to a minimum of 35% of the nights in a year.

Some Workgroup members were of the opinion that the support amounts in the Economic Table[52] were based on an assumption that the parents would have the "typical" residential schedule from the time when the Washington State Child Support Schedule (WSCSS) was first adopted.[53] These members felt that since the support amounts did not presume that the children would reside with the custodial parent all of the time, there was already some kind of residential schedule credit built into the WSCSS.

This led them to recommend that there should be a threshold amount for the residential schedule deviation based on the "typical" residential schedule, which came out to approximately 14% of annual overnights.

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[52] RCW 26.19.020.

[53] The WSCSS was adopted in 1988 (see FN 19, *supra*). At that time, the "typical" residential schedule would have the child(ren) residing mainly in one household except for every other weekend plus two weeks for vacation with the other parent. In the 1990s, it became customary (but not statutorily required) to have the child(ren) spend one mid-week night with the other parent during the week that they did not spend the weekend with that parent.

Other members of the Workgroup felt that there should be a significant threshold of at least 25% of overnights, with some members arguing for a 35% threshold.

Still others wanted to use the threshold amount for the Residential Schedule Adjustment included in the early version of Chapter 26.19 RCW, which provided for a deviation based on the residential schedule if the children spent more than 25% of the year with the paying parent. Twenty-five percent of the year was defined as 91 nights. In 1991, the 25% formula was removed for the statute and the residential schedule became the basis for a deviation from the standard calculation.

After much discussion, the Workgroup reached consensus on a recommendation that there be no threshold before the residential schedule deviation – however it may be calculated, and whether it is defined as a deviation or an adjustment – can be applied. The Workgroup recommends that the residential schedule deviation be available as soon as the children spend one night in the other parent's household.

As a final note concerning the residential schedule deviation, the Workgroup would like to draw the Legislature's attention to a very recent (September 1, 2015) Court of Appeals case in which the court applied an *upward* deviation to the father's child support obligation because the father spent absolutely no time with the children and the children resided 100% of the time with the mother. That case is so recent it does not yet have a complete citation.[54]

[54] *In re the Marriage of Selley*, _ P.3d _, _ Wn.App _, No. 32057-0-III (Wash Appeals, Div 3, Sept. 1, 2015).

RECOMMENDATION TWO

The residential schedule deviation should be available in both the court and administrative processes.

Background for Recommendation Two:

Since the 2007 Child Support Schedule Workgroup, all of the quadrennial Workgroups convened under RCW 26.19.025 have felt strongly that a residential schedule deviation available under the Washington State Child Support Schedule (WSCSS) should be applicable not only in superior court, but also in the administrative forum. They agreed that whatever child support schedule is ultimately adopted, it must provide certainty and consistency while allowing flexibility to deal with unjust or inappropriate outcomes, and cover the greatest possible number of families.

Discussion of Recommendation Two:

Should a Residential Schedule Deviation be Available in the Administrative Forum as well as in the Superior Court?

The 2015 and 2011 Workgroups started out their discussions after reviewing a report prepared by the Division of Child Support using data compiled from child support court and administrative orders. Those reports indicated that almost one-half of the child support orders issued in Washington each year are administrative orders.

- Out of the 1,046 randomly selected child support orders studied in the 2014 Child Support Order Review,[55] there were 469 (44.8% of the total) administrative orders and 577 (55.2% of the total) court orders.
- The Child Support Order Review prepared for the 2011 Child Support Schedule Workgroup covered 1,132 randomly selected orders; of those, 486 (42.9%) were administrative orders and 646 (57.1%) were court orders.

The 2015 Workgroup members quickly agreed that they did not think it was fair to allow a residential schedule deviation only in the superior courts. This approach supports the general concept of access to justice, as the Workgroup recognized that many families use the administrative process for child support orders because they cannot afford to hire attorneys to file a case in superior court.

In addition, many administrative support orders are established by DCS so soon after the parties separate that they may not have had a chance to decide whether the separation will be temporary or permanent. A permanent end to the relationship would entail filing a court proceeding such as a dissolution of marriage, which requires the parties to deal with many issues other than child support. As a matter of fact, many parties to administrative

[55] This report was provided to the 2015 Child Support Schedule Workgroup under RCW 26.18.210. You can find the 2014 Child Support Order Review in Appendix V, or online at https://www.dshs.wa.gov/sites/default/files/ESA/dcs/documents/15ChildSupportOrderReviewWSCSWG.pdf

support orders choose to continue their administrative orders throughout and even after any court proceedings because doing so allows them to limit the issues they need to litigate in court.

Should the Same Residential Schedule Deviation be Applied in Both the Administrative Forum and the Superior Court?

The Workgroup reached consensus that the same residential schedule deviation and formula method should be available whether the parties were in court or in the administrative forum.

- The Workgroup discussed that the availability of the residential schedule deviation should not depend on whether there was an existing residential schedule or parenting plan and that superior courts continue to base residential schedule deviations on existing residential schedules or parenting plans as a best practice.
- The current process used to obtain a residential schedule deviation in superior court should not change.
- The workgroup agreed that the deviation could be applied in the administrative forum.
- The department could apply the deviation if both parties agreed to the number of overnights.
- That if the parties did not agree, that an administrative law judge could apply the deviation based on findings of fact in the administrative hearing.

Most often, in superior court, a child support order is ordered at the same time as the parenting plan for the children of the parties. Workgroup discussions recognized that the administrative process cannot be used to establish a parenting plan; such orders are available only in court.

A majority of the Workgroup suggested that, since many parents with administrative child support orders have not had the opportunity (for whatever reason) to get a court-ordered parenting plan, the residential schedule deviation should be available even without a plan. Their proposed solution to this issue was that a child support order be based either on the agreement of the parties or the findings of fact by an administrative law judge regarding the number of overnights the children spent with each parent.

The Division of Child Support is a creature of statute and has only those powers granted to it by statute. There is no statute allowing an administrative parenting plan. However, one of the reasons expressed for requiring an existing parenting plan was the fear that an administrative support order containing a residential schedule deviation might be interpreted at a later date as an "official" parenting plan.

RECOMMENDATION THREE

There should be rules on when the residential schedule deviation may not be applied.

- The majority of the Workgroup voted that the residential schedule deviation should not be applied if it would result in insufficient funds in the recipient's household, if the self-support reserve is being applied to either party, or if the children receive TANF.

Background for Recommendation Three:

RCW 26.19.075(1)(d) currently provides that the court may not deviate based on the residential schedule of the child if the deviation will result in insufficient funds in the household receiving the support to meet the basic needs of the child or if the child is receiving Temporary Assistance for Needy Families (TANF). The Workgroup recommends that these existing "low income limitations" should continue to apply to any residential schedule deviation adopted by the Legislature.

In addition to the limitations in the current statute, the majority of the Workgroup recommends including a provision that the residential schedule deviation should not be allowed if the Self-Support Reserve limitation applies to either parent's household. In the minority, Legal Services opposes this recommendation. See Appendix IX for explanation of Legal Service's concerns.[56]

RECOMMENDATION FOUR

The statute should specify how and when the residential schedule deviation is to be calculated.

- If the deviation is granted, then the calculation of the deviation should be based upon a specific formula.
- In statute, the formula should be expressed as a table, not just a formula.
- The unit of measurement for determining the residential schedule deviation should be the number of overnights that the children spend with each parent.
- There should be no threshold amount of overnights required before a residential schedule deviation may be applied.
- The formula should be applied to the basic child support obligation.
- The formula should be readily accessible including the DCS website and other appropriate places.
- The formula should be easy to understand.
- The revision should be called a residential schedule deviation.

[56] See RCW 26.19.065(2) and WAC 388-14A-3410 for a discussion of the Self-Support Reserve (SSR) of 125% of the federal poverty guideline. RCW 26.19.065(2) does not specify that the SSR should be calculated as 125% of the amount shown for a one-person family in the federal poverty guideline. However, DCS adopted this interpretation in WAC 388-14A-3410 and the 2011 Child Support Schedule Workgroup recommended that the statutory language be corrected. The 2015 Workgroup concurs.

Background for Recommendation Four:

The Workgroup recommends that there be a formula on which the residential schedule is calculated. The Workgroup further recommends that this formula should not be recited or set forth in the statute, but rather that the statute should contain a description of the formula as well as a reference table based upon that formula, with the result that there would be no need to perform a full calculation of the residential schedule deviation in each case but instead one could merely find the correct number on the table.

The Workgroup agreed in a strong majority that the formula to be used is the "Plotnick Formula," developed by Professor Dr. Robert Plotnick, the Workgroup's economist. The Workgroup members did acknowledge that the Plotnick Formula was much easier to understand and apply compared to the formula recommended by the 2011 Workgroup Report.

Discussion of Recommendation Four:

Should there be a formula?

In order to assure a consistent and predictable method from case to case and forum to forum, the Workgroup agreed there should be a formula.

Should the statute contain a table based on the formula?

When applying the deviation, the Workgroup agreed that the formula used should be easy to apply and should be available in a table format. Some individuals, including unrepresented parents, might find the formula intimidating, so a table seemed a reasonable and accessible method of providing the same calculation that a formula would. In addition, the committee felt that the department or courts should offer an on-line calculator for the residential schedule deviation much as they do for the economic table itself.

This recommendation analogizes the way that RCW 26.19.020 contains only the Economic Table, which although based on a formula only requires one to find the correct place in the table.

Should the Plotnick Formula be the formula used?

A strong majority of the Workgroup members say yes.

The Plotnick Formula assumes that there is a breakpoint in the costs and expenses related to parenting time when a child resides in a parent's household at least twenty-percent of the nights per year. This is achieved by a deviation that increases at a steeper rate after a child resides with a parent at least twenty-percent of the nights per year.

A residential schedule deviation for a parent that resides with the child less than the breakpoint is calculated by multiplying the total support obligation by twenty-five percent of the percent of nights a child spends with that parent.

A residential schedule deviation for a parent that resides with the child over the breakpoint of twenty percent is calculated by multiplying the percent of nights in a year, over the breakpoint, that a child resides with the parent by one and a half and adding five percentage points to the result. The sum is then multiplied by the total support obligation.

This formula is expressed in the subsequent table. The table is used by multiplying the percentage associated with the number of overnights with the obligated parent by the basic support obligation to calculate the amount of the deviation.

Number of Overnights Per Year	% of Basic Support Obligation	Number of Overnights Per Year	% of Basic Support Obligation	Number of Overnights Per Year	% of Basic Support Obligation	Number of Overnights Per Year	% of Basic Support Obligation
1	0.1%	47	3.2%	93	13.2%	139	32.1%
2	0.1%	48	3.3%	94	13.6%	140	32.5%
3	0.2%	49	3.4%	95	14.0%	141	33.0%
4	0.3%	50	3.4%	96	14.5%	142	33.4%
5	0.3%	51	3.5%	97	14.9%	143	33.8%
6	0.4%	52	3.6%	98	15.3%	144	34.2%
7	0.5%	53	3.6%	99	15.7%	145	34.6%
8	0.6%	54	3.7%	100	16.1%	146	35.0%
9	0.6%	55	3.8%	101	16.5%	147	35.4%
10	0.7%	56	3.8%	102	16.9%	148	35.8%
11	0.8%	57	3.9%	103	17.3%	149	36.2%
12	0.8%	58	4.0%	104	17.7%	150	36.6%
13	0.9%	59	4.0%	105	18.2%	151	37.1%
14	1.0%	60	4.1%	106	18.6%	152	37.5%
15	1.0%	61	4.2%	107	19.0%	153	37.9%
16	1.1%	62	4.3%	108	19.4%	154	38.3%
17	1.2%	63	4.3%	109	19.8%	155	38.7%
18	1.2%	64	4.4%	110	20.2%	156	39.1%
19	1.3%	65	4.5%	111	20.6%	157	39.5%
20	1.4%	66	4.5%	112	21.0%	158	39.9%
21	1.4%	67	4.6%	113	21.4%	159	40.3%
22	1.5%	68	4.7%	114	21.9%	160	40.8%
23	1.6%	69	4.7%	115	22.3%	161	41.2%
24	1.6%	70	4.8%	116	22.7%	162	41.6%
25	1.7%	71	4.9%	117	23.1%	163	42.0%
26	1.8%	72	4.9%	118	23.5%	164	42.4%
27	1.9%	73	5.0%	119	23.9%	165	42.8%
28	1.9%	74	5.4%	120	24.3%	166	43.2%
29	2.0%	75	5.8%	121	24.7%	167	43.6%
30	2.1%	76	6.2%	122	25.1%	168	44.0%
31	2.1%	77	6.6%	123	25.6%	169	44.5%
32	2.2%	78	7.1%	124	26.0%	170	44.9%
33	2.3%	79	7.5%	125	26.4%	171	45.3%
34	2.3%	80	7.9%	126	26.8%	172	45.7%
35	2.4%	81	8.3%	127	27.2%	173	46.1%
36	2.5%	82	8.7%	128	27.6%	174	46.5%
37	2.5%	83	9.1%	129	28.0%	175	46.9%
38	2.6%	84	9.5%	130	28.4%	176	47.3%
39	2.7%	85	9.9%	131	28.8%	177	47.7%
40	2.7%	86	10.3%	132	29.3%	178	48.2%
41	2.8%	87	10.8%	133	29.7%	179	48.6%
42	2.9%	88	11.2%	134	30.1%	180	49.0%
43	3.0%	89	11.6%	135	30.5%	181	49.4%
44	3.0%	90	12.0%	136	30.9%	182	49.8%
45	3.1%	91	12.4%	137	31.3%		
46	3.2%	92	12.8%	138	31.7%		

The Dr. Plotnick formula for the dollar amount of the credit is:
Credit = TS * (.25 * (N/365)) if $N \leq 73$
Credit = TS * (.05 + ((N – 73)/365) * 1.5) if $N > 731$

Where TS = total support obligation based on combined income of both parents and N = number of night spent with NCP. Note that 73 nights is 20% of a year.

The group agreed to support in strong majority the Dr. Plotnick formula:

- To avoid the conflict-promoting threshold inherent in the cross-credit calculation.
- The formula is simpler than the cross-credit calculation.
- The formula provides an estimate of child-rearing costs that are transferred with shared parenting, adjusted for duplicated costs associated with maintaining two households.
- The Plotnick formula closely follows the Oregon formula for all situations. Above the 25% threshold, our formula matches the 1.5x cross-credit calculation when parents have relatively equal incomes.
- When incomes are unequal (see below), the cross-credit adjusts the residential schedule deviation whereas neither the Oregon formula nor the proposed Plotnick are dependent upon income ratios.
- Since the formula is recommended for a deviation not an adjustment, judges will have abundant discretion to address cases with highly unequal parent incomes.
- The formula will not be used at all in most low-income situations.
- The uniformity it would bring to applications of residential schedule deviation is an admirable goal and one the federal government certainly wants us to work towards.

Legal Services represented the one minority vote in opposition to adoption of Dr. Plotnick's formula. See Appendix IX for explanation of Legal Service's concerns.

Should the residential schedule formula be applied to the basic child support obligation or the standard calculation?

- The Workgroup members discussed whether to apply the formula to the basic child support obligation or the standard calculation. The workgroup reached a consensus agreement to apply the formula to the basic child support obligation. Health care, day care, and special child rearing expenses should be prorated based upon the income of the parents.

RECOMMENDATION FIVE

These recommendations require revision of the existing WSCSS Worksheets.

- There should be a new line added to the "Additional Information Calculations" section of the WSCSS worksheet (part VII) in order to show the dollar amount of the potential residential schedule deviation.
- The WSCSS Worksheet should not automatically apply the residential schedule deviation.

Background for Recommendation Five:

The Workgroup members felt that the WSCSS Worksheets should be revised to provide enough information concerning the residential schedule deviation that it would be easy for unrepresented parties to calculate the amount of deviation before determining whether the deviation was appropriate.

To this end, the Workgroup recommends that the WSCSS Worksheets should set out the amount of the residential schedule deviation but that the WSCSS Worksheets should not automatically calculate the support obligation that results from the application of the deviation.

As discussed in Recommendation Four, the Workgroup recommends that the dollar value of the residential schedule deviation be predictable. This means that two cases where the parents had the same number of children on the WSCSS Worksheet, the same combined monthly net income, the same proportionate share of income, and the same number of overnights would, if the residential schedule deviation were applied, have the same deviation. In order to assure this, the Workgroup recommends that the WSCSS Worksheets be revised to show the dollar amount of the potential deviation.

Discussion of Recommendation Five:

Just as the Workgroup recommends that there be an easy-to-use Table such as the one shown in Appendix IX, the Workgroup recommends that the WSCSS Worksheets include a line that shows the amount of residential schedule deviation that could be applied in the case.

The Workgroup recommends that a new line be put into the WSCSS Worksheet in Part VII, which contains "Additional Informational Calculations." Currently, this section shows the amounts of 45% of each parent's net income and 25% of each parent's basic support obligation. The Workgroup recommends that the amount of each parent's possible residential schedule deviation be shown as one of these additional informational calculations.

This revision to the WSCSS Worksheet would allow the parties, their attorneys or the court to see at a glance what the residential schedule deviation would be if there are no reasons why the deviation should not be applied. This information would provide a basis for the determination of whether the residential schedule deviation were applied, and would allow a quick review of whether the deviation would result in insufficient funds in the household.

The Workgroup recommends that the WSCSS Worksheet not allow for the automatic application of the residential schedule deviation. Doing so would create the potential for confusion and mistakes for self-represented parties or inexperienced practitioners, who could easily think that because the deviation gets applied in the Worksheet calculations, it must be required. Because of the low income protections currently in the WSCSS and recommended by the Workgroup, this misunderstanding could result in grossly unfair child support orders.

RECOMMENDATION SIX

The Workgroup recommends that, if the parent receiving the residential schedule deviation does not spend time with the children in the same amount as used as the basis for the deviation, then there should be enforcement remedies available.

- The deviation should be removed, or at least revised, if the parent spends less time with the children than contemplated.
- The deviation should be increased if the parent spends more time with the children than contemplated.
- There should be the option to bring a contempt action to ask the court to suspend, waive, or reduce the residential schedule deviation.
- The Workgroups recommends modifications to RCW 26.09.075 the corresponding statute related to the administrative process to add a request to suspend, waive, or reduce the residential schedule deviation as a basis to modify or adjust the child support order.
- Any support order granting a residential schedule deviation should contain warnings advising the parties about what can happen if the residential schedule is not followed.

Background for Recommendation Six:

Based on the recommendations of the Parenting Plan Subcommittee, the Workgroup discussed ways to make sure that the parent who received a residential schedule deviation continues to maintain that residential schedule. The Workgroup wanted to cover both kinds of "noncompliance" with a residential schedule: what happens if the parent spends less time with the children than contemplated, and what happens if the parent spends more time with the children than contemplated?

Discussion of Recommendation Six:

The Parenting Plan Subcommittee recommended that the legislature create new sections in Chapter 26 RCW and RCW 74.20A.059 to the effect that, if a residential schedule deviation is given; but a parent does not spend the time with the children, then the other party may file one of the following:

- A petition to modify the child support order to ask the court or administrative tribunal to modify the residential schedule deviation;
- A motion to adjust the child support order to ask the court to adjust the residential schedule deviation; or
- A motion for contempt, and ask the court to coerce compliance with the order by suspending or temporarily reducing the residential schedule deviation.

The Workgroup discussed whether in a contempt action the courts would be willing to sanction a party for the violation of a parenting plan by failure to exercise the residential provisions of the parenting plan or the use by either or both parents of the residential schedule deviation as dodge to avoid child support obligations. Several Workgroup

members maintained that the court has inherent power to enforce its orders by any means necessary to compel compliance. Among the chief sanctions used to enforce child support orders and parenting plan violations is contempt.

The Workgroup members agreed that using the residential schedule or residential schedule deviation as a dodge to avoid paying child support should be discouraged as a matter of public policy, and that the contempt process appeared to be one avenue for enforcement. Some Workgroup members found the contempt process not very user-friendly for self-represented parties. The workgroup felt it was important to identify the additional remedies of modification and adjustment processes for reconsideration of the deviation.

The subcommittee discussed a variety of threshold ideas, including missing a substantial percentage of residential time but could not agree on what percentage of time would qualify as a substantial percentage. They also discussed whether there should be a specified time period of noncompliance. The workgroup reached consensus that there should not be a threshold defined in statute of how much residential time is missed before one of the parties could seek enforcement or reconsideration of the residential schedule deviation.

RECOMMENDATION SEVEN

Clarify how children from other relationships factor into application of the Self Support Reserve and the calculation of the basic support obligation for the children before the court.

Amend RCW 26.19.065(2) so that the statute is clarified that neither parent's basic support obligation owed for all of his or her biological or legal children may reduce that parent's income below the self-support reserve of 125% of the federal poverty guideline for a one person household unless it would be unjust and each child is entitled to a pro rata share of the income available for support (but not less than $50.00 per child per month) and the court only applies the pro rata share to the children in the case before the court.

Background for Recommendation Seven:

Our current statute provides that the basic support obligation of the obligor parent (the parent making the transfer payment), shall not reduce the obligor's income below 125% of the federal poverty level, except for the presumptive minimum of $50.00 per child per month. We call this the self-support reserve and the policy of the law in Washington is that a parent should have that much money available to him/her to support themselves in most cases. This limitation works well when calculating the support of a parent whose income is less than the self-support reserve. It also works well when calculating the support of a low income parent whose income is above the self-support reserve and the only children of that parent are the children in the case before the court. This limitation, however, does not work when that obligor has other children that are not before the court that the obligor also must support. Because our current statute does not give direction on what to do in these situations, the low income obligor whose income is above the self-support reserve will end up with a transfer payment that will take him/her well below the self-support reserve when we take into account what is owed for all of his/her children.

For example, the parents who earn minimum wage in Washington in 2015 ($9.47/hour) will have a net monthly income or around $1386.00. The self-support reserve in Washington for 2015 is $1226.00 per month. Therefore, this parent has $160.00 available to support his/her children. If we are setting support for the minimum wage parent, this parent will be ordered to pay $160.00 for up to three children in the case before the court. If the parent has more than three children in the case before the court, the presumptive minimum will increase the transfer payment to $50/child/month. If the minimum wage parent has one child before the court and one or more other children that are not before the court that he/she supports, however, the transfer payment for the child before the court will be $160.00. In other words, this minimum wage obligor parent will not get a deviation for his/her other children not before the court. The Whole Family Formula does not help this parent either. There are two main software programs used for preparing worksheets. The state (Division of Child Support and the prosecutors) use a program called SS GEN. The private bar, the courts and the administrative law judges use a program called Support Calc. When preparing a worksheet on either program with the

examples given, there will be no reduction in the transfer payment of $160.00 when using the Whole Family Formula unless the obligor has at least three or more other children not before the court and then the reduction is slight.

This seems especially unfair when we consider the other limitation in the Washington statute which is the 45% limitation. This limitation offers some financial protection to the upper middle and upper income obligor parent. This limitation provides that neither parent's support obligation may exceed 45% of that parent's net income and that each child is entitled to a pro rata share of the income available for support but the court only applies the pro rata share to the children in the case before the court.

According to the statistical information gathered by the Division of Child Support, 59.3% of order entered in Washington deviate from the standard calculation based upon children from other relationships or children not before the court. In addition, about 51% of orders entered deal with a combined monthly net income of between $2000.00 and $4000.00. Low income parents with multiple children are not an insignificant part or the child support orders entered in our state.

The Workgroup recommends that RCW 26.19.065 reads as such:

RCW 26.19.065 Standards for establishing lower and upper limits on child support amounts.

(1) **Limit at forty-five percent of a parent's net income.** Neither parent's child support obligation owed for all his or her biological or legal children may exceed forty-five percent of net income except for good cause shown.

(a) Each child is entitled to a pro rata share of the income available for support, but the court only applies the pro rata share to the children in the case before the court.

(b) Before determining whether to apply the forty-five percent limitation, the court must consider whether it would be unjust to apply the limitation after considering the best interests of the child and the circumstances of each parent. Such circumstances include, but are not limited to, leaving insufficient funds in the custodial parent's household to meet the basic needs of the child, comparative hardship to the affected households, assets or liabilities, and any involuntary limits on either parent's earning capacity including incarceration, disabilities, or incapacity.

(c) Good cause includes, but is not limited to, possession of substantial wealth, children with day care expenses, special medical need, educational need, psychological need, and larger families.

(2) **Presumptive minimum support obligation and low income limitation.**

(a) When a parent's monthly net income is below one hundred twenty-five percent of the federal poverty guideline, a support order of not less than fifty dollars per child per month

shall be entered unless the obligor parent establishes that it would be unjust to do so in that particular case. The decision whether there is a sufficient basis to deviate below the presumptive minimum payment must take into consideration the best interests of the child and the circumstances of each parent. Such circumstances can include leaving insufficient funds in the custodial parent's household to meet the basic needs of the child, comparative hardship to the affected households, assets or liabilities, and earning capacity.

(b) The basic support obligation of the parent making the transfer payment, excluding health care, day care, and special child-rearing expenses, shall not reduce his or her net income below the self-support reserve of one hundred twenty-five percent of the federal poverty level, except for the presumptive minimum payment of fifty dollars per child per month or when it would be unjust to apply the self-support reserve limitation after considering the best interests of the child and the circumstances of each parent. Such circumstances include, but are not limited to, leaving insufficient funds in the custodial parent's household to meet the basic needs of the child, comparative hardship to the affected households, assets or liabilities, and earning capacity. This section shall not be construed to require monthly substantiation of income.

(c)When a parent's income is greater than the self-support reserve of 125% of the federal poverty guideline for a one person household, neither parent's basic child support obligation owed for all of his or her biological or legal children may reduce that parent's income below the self-support reserve of 125% of the federal poverty guideline for a one person household except for the presumptive minimum of $50.00 per child per month.

Each child is entitled to a pro rata share of the income available for support but the court only applies the pro rata share to the children in the case before the court. Before determining whether to apply this limitation, the court should consider whether it would be unjust to apply this limitation after considering the best interests of the child and the circumstances of each parent. Such circumstances can include leaving insufficient funds in the custodial parent's household to meet the basic needs of the child, comparative hardship to the affected households, assets or liabilities, and earning capacity.

(3) **Income above twelve thousand dollars.** The economic table is presumptive for combined monthly net incomes up to and including twelve thousand dollars. When combined monthly net income exceeds twelve thousand dollars, the court may exceed the presumptive amount of support set for combined monthly net incomes of twelve thousand dollars upon written findings of fact.

RECOMMENDATION EIGHT

The Workgroup endorses two recommendations of the 2011 Child Support Schedule Workgroup:

- The revised Economic Table should be adopted.
- The language regarding the Self-Support Reserve should be clarified to say that, no matter how many people resided in each household, the Self-Support Reserve is based on 125% of the Federal Poverty Level for a one-person household.

Background for Recommendation Eight:

Prior to the first meeting of the 2015 Workgroup, members were asked to review the Report of the 2011 Child Support Schedule Workgroup, as well as the provisions of House Bill 1037, which was proposed in the 2015 legislative session to implement the recommendations of the 2011 Workgroup.

Initially, the 2015 Workgroup decided not to rehash the recommendations of the 2011 Workgroup because of the pending bill, and preferred to focus on the residential schedule deviation, an issue that was not included in HB 1037.

After it became clear that HB 1037 was not going to be passed this year, the Workgroup members were asked if there were any recommendations made by the 2011 Workgroup that they wanted to recommend to the Legislature.

There was not sufficient time for the 2015 Workgroup members to have a thorough discussion of the 2011 Workgroup's recommendations, but the Chair asked to measure the "sense of the Workgroup" by a vote on the 2011 recommendations. Workgroup members were asked simply if they wanted to endorse a recommendation or not. The two recommendations listed here received consensus votes of endorsement.

The relevant sections of the Report of the 2011 Child Support Schedule Workgroup are provided in Appendix IV below.

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Appendix I

Roster of 2015 Workgroup Members

Chair: Wally McClure, Director of the DSHS Division of Child Support

Legislative Members:
Senator Jeannie Darneille (D-27th District)
Representative Dave Hayes (R-10th District)
Representative Christine Kilduff (D-28th District)

Governor Appointments:
ALJ Ami Abuan
Kristofer Amblad
David Brown
Kevin Callaghan
Julirae Castleton
The Honorable Tami Chavez
Merrie Gough
Nathaniel Hildebrand
Kala Jackson
Steven Larson
Professor Inga Laurent
The Honorable Richard Okrent
Professor Robert Plotnick
Melora Sharts
Charles Szurszewski
Coti Westby

Appendix II

RCW 26.19.025

RCW 26.19.025 Quadrennial review of child support guidelines and child support review report — Work group membership — Report to legislature. (1) Beginning in 2011 and every four years thereafter, the division of child support shall convene a work group to review the child support guidelines and the child support review report prepared under RCW *26.19.026 and 26.18.210 and determine if the application of the child support guidelines results in appropriate support orders. Membership of the work group shall be determined as provided in this subsection.

(a) The president of the senate shall appoint one member from each of the two largest caucuses of the senate;

(b) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives;

(c) The governor, in consultation with the division of child support, shall appoint the following members:

(i) The director of the division of child support;

(ii) A professor of law specializing in family law;

(iii) A representative from the Washington state bar association's family law executive committee;

(iv) An economist;

(v) A representative of the tribal community;

(vi) Two representatives from the superior court judges' association, including a superior court judge and a court commissioner who is familiar with child support issues;

(vii) A representative from the administrative office of the courts;

(viii) A prosecutor appointed by the Washington association of prosecuting attorneys;

(ix) A representative from legal services;

(x) Three noncustodial parents, each of whom may be a representative of an advocacy group, an attorney, or an individual, with at least one representing the interests of low-income, noncustodial parents;

(xi) Three custodial parents, each of whom may be a representative of an advocacy group, an attorney, or an individual, with at least one representing the interests of low-income, custodial parents; and

(xii) An administrative law judge appointed by the office of administrative hearings.

(2) Appointments to the work group shall be made by December 1, 2010, and every four years thereafter. The governor shall appoint the chair from among the work group membership.

(3) The division of child support shall provide staff support to the work group, and shall carefully consider all input received from interested organizations and individuals during the review process.

(4) The work group may form an executive committee, create subcommittees, designate alternative representatives, and define other procedures, as needed, for operation of the work group.

(5) Legislative members of the work group shall be reimbursed for travel expenses under RCW 44.04.120. Nonlegislative members, except those representing an employee or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(6) By October 1, 2011, and every four years thereafter, the work group shall report its findings and recommendations to the legislature, including recommendations for legislative action, if necessary.

[2011 c 21 § 2; 2007 c 313 § 5; 1991 c 367 § 26.]
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Appendix III

42 CFR 302.56

TITLE 45--PUBLIC WELFARE

CHAPTER III--OFFICE OF CHILD SUPPORT ENFORCEMENT (CHILD SUPPORT ENFORCEMENT PROGRAM), ADMINISTRATION FOR CHILDREN AND FAMILIES, DEPARTMENT OF HEALTH AND HUMAN SERVICES

PART 302 STATE PLAN REQUIREMENTS--Table of Contents

§302.56 Guidelines for setting child support awards.

(a) Effective October 13, 1989, as a condition of approval of its State plan, the State shall establish one set of guidelines by law or by judicial or administrative action for setting and modifying child support award amounts within the State.

(b) The State shall have procedures for making the guidelines available to all persons in the State whose duty it is to set child support award amounts.

(c) The guidelines established under paragraph (a) of this section must at a minimum:

(1) Take into consideration all earnings and income of the noncustodial parent;

(2) Be based on specific descriptive and numeric criteria and result in a computation of the support obligation; and

(3) Address how the parents will provide for the child(ren)'s health care needs through health insurance coverage and/or through cash medical support in accordance with §303.31 of this chapter.

(d) The State must include a copy of the guidelines in its State plan.

(e) The State must review, and revise, if appropriate, the guidelines established under paragraph (a) of this section at least once every four years to ensure that their application results in the determination of appropriate child support award amounts.

(f) Effective October 13, 1989, the State must provide that there shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the guidelines established under paragraph (a) of this section is the correct amount of child support to be awarded.

(g) A written finding or specific finding on the record of a judicial or administrative proceeding for the award of child support that the application of the guidelines established under paragraph (a) of this section would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case, as determined under criteria established by the State. Such criteria must take into consideration the best interests of the child. Findings that rebut the guidelines shall state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.

(h) As part of the review of a State's guidelines required under paragraph (e) of this section, a State must consider economic data on the cost of raising children and analyze case data, gathered through sampling or other methods, on the application of, and deviations from, the guidelines. The analysis of the data must be used in the State's review of the guidelines to ensure that deviations from the guidelines are limited.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19649, May 9, 1985; 50 FR 23958, June 7, 1985, as amended at 51 FR 37731, Oct. 24, 1986; 56 FR 22354, May 15, 1991; 73 FR 42441, July 21, 2008]

Appendix IV

2011 Workgroup Recommendations Endorsed by the 2015 Workgroup

The 2015 Child Support Schedule Workgroup endorsed two recommendations of the 2011 Workgroup: the adoption of the revised Economic Table,[57] and the clarification regarding the Self-Support Reserve.[58] The following excerpts from the 2011 Report provide information regarding those recommendations.[59]

Issue 1:

The Workgroup makes the following recommendations regarding the Economic Table:

The Legislature should adopt a new Economic Table which is based on more current data, is presumptive to $12,000 combined monthly net income, and does not differentiate between age groups of children.

New Economic Table Based on Current Data

It was very important to the Workgroup that the Economic Table should have a clearly identified economic basis, which can be explained and validated periodically against updated models of similar form and source. Workgroup members felt unable to explain the reasoning or assumptions underlying the current Economic Table.

From the beginning, the Workgroup members were concerned that the current Economic Table is based on economic data and information that is at least thirty years old. In addition, the Economic Table, when expressed as a curve, contains an inexplicable "dogleg" which appears to have been based on political, not economic, considerations.

Seeking information on how the current Economic Table was developed, the Workgroup sought input from Mary Hammerly, an attorney who participated in the Washington State Child Support Schedule Commission. The Commission's recommendations were adopted by the Washington State Legislature in 1988 to establish the Washington State Child Support Schedule, codified as Chapter 26.19 RCW. During a conference call on June 24, 2011, Ms. Hammerly shared her memories of the Commission and the legislative process, but did not know the history behind the dogleg.

The Workgroup considered input from a variety of sources, and the Economic Table Subcommittee discussed several options before coming up with its recommendations to

[57] See 2011 Workgroup Report at page 17.
[58] See 2011 Workgroup Report at page 29.
[59] In order to save space, this Report eliminates footnotes from the 2011 Report.

the Workgroup. The Subcommittee's main recommendation was that the current Economic Table should be replaced.

As part of its work, the Economic Table Subcommittee reviewed the current Washington Economic Table and compared it with tables from similar states. They created a chart showing the curve of each Economic Table by plotting "single child support payments versus income" from the following tables:

- Current Washington Economic Table
- Economic Table from Pennsylvania, which is a similar-sized state, using net income and a Betson-Rothbarth inspired model
- A 2005 Betson-Rothbarth model prepared for Washington State
- An approximation of the Minnesota Economic Table, described by the subcommittee as a gross-income table based on the USDA model. For our purposes, income was adjusted from gross to net, and the average differential between Urban Midwest and Urban West estimates of expenditures applied

Based on the Comparison Chart, the Subcommittee determined that:

> "Both the Betson-Rothbarth and USDA models appear to have similar functional forms, and are not dramatically different from each other. This consistency was also demonstrated over time during Dr. Betson's presentation. Either approach, or some consensus estimate between these models, would meet our criteria of clarity, consistency, and well-defined content."

The Workgroup then asked that DCS request Dr. David Betson of the University of Notre Dame to prepare a draft Economic Table based on recent research he had performed. Dr. Betson agreed to prepare a draft table for no remuneration, and the Workgroup reviewed that draft at the September 9th meeting.

The Workgroup recommends a slightly-modified version of the "Betson Rothbarth Table," as developed by Dr. Betson with the assistance of Jane Venohr of Policy Studies, Inc. The original "Betson Rothbarth Table" reviewed on September 9th contained the assumption that extraordinary medical expenses (defined as those expenses exceeding $250 per calendar year) were to be dealt with outside the Economic Table. The Workgroup requested Dr. Betson to revise the proposed Economic Table to remove that $250 per year, because the bill that was based on the recommendations of the 2007 Workgroup (ESHB 1794, Chapter 84, Laws of 2009) amended RCW 26.19.080 to provide in subsection (2):

> "Health care costs are not included in the economic table. Monthly health care costs shall be shared by the parents in the same proportion as the basic child support obligation. Health care costs shall include, but not be limited to, medical, dental, orthodontia, vision, chiropractic, mental health

treatment, prescription medications, and other similar costs for care and treatment."

Although they realize that any resulting changes to the actual dollar amounts on the table will no doubt be small, if not insignificant, the Workgroup members felt that it was important to remove the $250/year in medical expenses. DCS staff contacted Dr. Betson, who agreed to provide a revised Economic Table. That revised Economic Table is contained in Appendix XIII of this Report.

The new Economic Table should be presumptive to $12,000 combined monthly net income

The Workgroup recommends that, like the current table, the new Economic Table should be presumptive up to $12,000 in combined monthly net income (CMNI). The Workgroup was unable to reach consensus on how much higher the presumptive amounts of support should go. A review of economic studies indicates that the majority of the data available is for households under $12,000 CMNI. Although there is some data available for higher-income families, the workgroup could not reach consensus on extending the table higher than $12,000 CMNI.

The majority of the Workgroup recommends that the Betson Rothbarth Economic Table (with the $250/yr medical costs removed) be adopted as presumptive up to $15,000 CMNI. There was a minority preference for adopting the table as presumptive up to $12,000 CMNI, and then advisory up to $15,000 CMNI. There was another minority opinion for adopting the table as presumptive only up to $12,000.

The Economic Table should not distinguish between age groups

The current Economic Table provides two different support amounts for each income bracket: Column A provides the support amount for children under 12, and Column B provides the support amount for children age 12-18.

The Workgroup recommends that any new Economic Table adopted for use in Washington not provide different support amounts based on the age of children for the same income bracket.

- The economic table developed by Dr. Betson for and recommended by the Workgroup (without the $250 in medical expenses), discussed on the previous pages, does not differentiate based on children's ages.
- While the current economic table does have two age brackets, the Workgroup does not recommend that the Legislature attempt to collapse these age brackets, as the Workgroup was not able to reach consensus on the mechanism to be used for that purpose.

Additional Recommendation:

References to the federal poverty level when discussing the self-support reserve should be revised to refer to "the federal poverty level for a one-person family."

During discussions of the different issues, Workgroup members decided that it was necessary to resolve an issue that was apparently inadvertently caused by language in §2 of ESHB 1794 (Chapter 84, Laws of 2009), which amended RCW 26.19.065.

ESHB 1794 amended references in RCW 26.19.065(2) to support obligations which would take the obligor's net monthly income below "the one-person need standard." The new terminology referred to "the self-support reserve," which was defined as "one hundred twenty-five percent of the federal poverty guideline." The Workgroup recommends that RCW 26.19.065(2) be amended to clarify that the self-support reserve is intended to be measured by 125% of the federal poverty guideline for a one-person family.

The basis for this recommendation is that the Report of the 2005 Child Support Schedule Review, as discussed in the Report of the 2007 Child Support Schedule Workgroup indicates that the amounts compared were the one-person need standard and 125% of the federal poverty guideline for a one-person family. It appears to this Workgroup that it may have been easier to talk about "the federal poverty level" and "the need standard" without including a reference to the fact that both of those were meant to apply a one-person-family standard.

Having discussed this point, the Workgroup acknowledges that the recommendation regarding the adjustment for Children Not Before the Court intentionally uses the measure of the federal poverty level based on the obligee's actual household size when determining whether use of that adjustment would be appropriate.

APPENDIX V

Washington State
2014 Child Support Order Review
January 2015

Washington State

2014 Child Support Order Review

January 2015

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Report Summary

Federal law requires states to enact statewide child support guidelines for setting child support awards. 45 CFR 302.56 requires the state to review the child support guidelines every four years. The quadrennial review is intended to ensure that application of the guidelines results in appropriate child support award amounts and that deviations are limited.

In 1988, the Washington State Legislature established a schedule for determining child support amounts that was codified at Chapter 26.19 RCW (Chapter 275, 1988 Laws). Child support may be awarded through the court system or through administrative proceedings[60] by the Department of Social and Health Services (DSHS), Division of Child Support (DCS). The Washington State Child Support Schedule (WSCSS) is based on the "income-shares" model. The child support obligation is based on the parents' combined net monthly income, and is then divided between the parents according to their proportionate share of total net income as defined by the WSCSS.[61] The WSCSS instructions also allow adjustments for various factual scenarios. The sum of the basic child support obligation with the adjustment calculations establishes the presumptive amount of the child support order. Unless a deviation is granted, this presumptive amount is the child support order amount.

In accordance with recommendations of the Joint Legislative Audit & Review Committee (JLARC)[62] and the quadrennial review requirements of federal and state law (RCW 26.19.025), DCS completed a review of child support orders by sampling administrative and court orders entered during the four year period from August 2010 to July 2014. This order review is intended to estimate the deviation rate of the child support orders and to identify the major reasons for the deviation.

The major findings of the 2014 DCS Order Review are:

- Out of the overall 1,046 randomly selected orders, there are 469, or 44.8%, administrative orders and 577, or 55.2%, court orders. The majority of the orders are IV-D orders[63] (85.1%) and the father is the noncustodial parent (NCP) on the order (80.5%).

- The median NCP monthly net income is $1,550 and the median order amount is $212, representing 13.7 percent of the noncustodial parent's income.

[60] Under RCW 74.20A.055, 74.20A.056 or 74.20A.059.
[61] See Appendix I – Order Review Definitions
[62] JLARC, January 5, 2010, – *Review of Child Support Guidelines - Report 10-1*, at Page 19
[63] See Appendix I – Order Review Definitions

- As the number of children on the orders increases, the NCP pays a larger proportion of income in child support – 12.7% for one child, 19.6% for two children, and 28.2% for three children.

- The sample shows that 94.6% of the parties to these orders have combined monthly net incomes that fall in the income range of the revised WSCSS Economic Table.[64] However, there are only 361 cases, or 34.5%, of the overall sample where actual NCP and custodial parent (CP) income were used to determine the combined monthly net income. The other orders were based on the imputed[65] income of one or both parents.

- Out of the total 1,046 orders, 219 orders were found that deviated from the WSCSS for reasons that were part of the statutorily-recognized deviation standards, which results in a 20.9% deviation rate. Deviations in non-IV-D[66] orders were more common (33.3%) than deviations in IV-D orders (18.8%). Court orders have a higher deviation rate (23.6%) than administrative orders (17.7%).

- The majority (95%) of deviations were downward, reducing the child support obligation from the presumptive amount, with the average downward amount being $229.60 per month.

- The majority of deviations found in Washington orders were because of the existence of children from other relationships or shared residential schedules. These two reasons account for 86.7% of the deviations. The remainder of the deviations are for other reasons such as other sources of income and tax planning, nonrecurring income, etc.

- For the overall sample, 485 out of the 1,046 orders, or 46.4%, apply adjustments to determine the presumptive order amounts. Administrative orders (49%) are more likely to apply adjustments than court orders (44.2%).

- Low income limitations were found to be the major reasons for order adjustments (74.9%). For those adjustments due to low income limitations, most of the orders in the sample were adjusted either due to the self-support reserve (62%) or Presumptive Minimum Obligation (32.8%).

[64] RCW 26.19.020.
[65] The definition of imputed income, and the methods of calculating imputed income, have changed over the years.
[66] Ibid.

Introduction

Federal law (45 CFR 302.56) requires states to enact statewide child support guidelines for setting child support awards, in order to standardize the amount of support orders among those with similar situations. All court and administrative proceedings must use their state's child support guidelines in setting child support orders unless there is a written, specific finding to deviate from the presumptive amount. In addition, federal law requires review of the guidelines at least every four years to ensure that application of the guidelines results in appropriate child support award amounts and that deviations are kept at a minimum.

Since 1990, RCW 26.18.210[67] has required completion of the Child Support Order Summary Report Form and filing with the county clerk in any proceeding where child support is established or modified. The 2005 Child Support Schedule Review Workgroup found that parties and courts did not always comply with this requirement, and found that those who did comply often completed the form incorrectly.[68] As a result of the 2005 Workgroup's recommendation, the legislature adopted 2SHB 1009 (Chapter 313, Laws of 2007), which in §4 amended RCW 26.18.210 to make changes to the form and to require DCS to collect information from these summary report forms and prepare a report at least every four years.

Section 6 of 2SHB 1009 created RCW 26.19.026, which directed the Joint Legislative Audit & Review Committee (JLARC) to review and analyze:

- The data collected from the order summary report;
- The recommendations of the 2007 child support workgroup;
- The current child support guidelines;
- Relevant research and data on the cost of raising children; and
- Research and data on the application of, and deviations from, the child support guidelines.

After the review, RCW 26.19.026 directed JLARC to prepare a report on the application of the current child support guidelines and the recommendations of the work group. JLARC staff did so, and submitted a final report in January 2010.[69] The JLARC review determined that the summary report forms were "inadequate for reaching valid conclusions about deviations from state guidelines or for conducting the federally required review of deviations." The report recommended that the "workgroups convened under RCW 26.19.025 should use data obtained directly from court and administrative orders to conduct the federally required quadrennial review."

[67] RCW 26.09.173 and RCW 26.10.195 contain the same requirement.
[68] Report of the 2005 Workgroup, page 15.
[69] JLARC, January 5, 2010, *Review of Child Support Guidelines – Report 10-1*.

Starting in 2011 and every four years thereafter, the Department of Social and Health Services (DSHS) Division of Child Support (DCS) was directed to convene a workgroup "to review the child support guidelines and the child support review report prepared under RCW 26.19.026 and determine if the application of the child support guidelines results in appropriate support orders."[70]

Washington State Child Support Schedule

In compliance with federal requirements, the Washington State Legislature established a state schedule for determining child support amounts that was codified as Chapter 26.19 RCW.[71] Child support may be awarded through the court or through administrative proceedings by the Department of Social and Health Services (DSHS), Division of Child Support (DCS).

The Washington State Child Support Schedule (WSCSS) is based on the "income-shares" model. This model, with some variation, is currently employed in 38 states. It is based on the concept that children should receive the same proportion of income that they would have received if their family was intact. The child support obligation is based on the parents' combined net monthly income and is then divided between the parents according to their proportionate share of income. The Schedule's instructions also allow for adjustments in various factual scenarios. The sum of the basic child support obligation with adjustments establishes the presumptive amount of the child support order. Generally, this presumptive amount is the child support order amount (also known as the transfer payment) unless the presumptive amount is rebutted or a deviation is granted.[72] The procedure for setting child support order amounts in Washington was summarized into five main steps in the JLARC report:

(1) The process starts with determining the combined monthly net income[73] of the parents.

(2) The economic table contained in RCW 26.19.020 is used to determine a Basic Support Obligation for each child based on the parent's combined net monthly income and other factors such as the number of children.

(3) Each parent's share of the Basic Support Obligation is determined by the parent's proportionate share of the combined income.

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[70] RCW 26.19.025(1)
[71] (Chapter 275, 1988 Laws)
[72] *E.g.*, the court in *N.R. v Soliz* (W.D. Wash. February 7, 1994) ruled that the presumptive minimum obligation is a rebuttable presumption, and that it was subject to downward deviation under proper circumstances, consistent with 45 CFR 302.56(g) in federal law. The *N.R. v Soliz* ruling applied only to administrative support orders, but the legislature codified this by amending RCW 26.19.065 in the 1998 session (§1 of SB 6581, Chapter 163, Laws of 1998).
[73] "Net Income" and "Gross Income" are defined in RCW 26.19.071.

(4) The law provides for some adjustments to this amount for shared expenses for the children (health care and special costs),[74] low income limitations,[75] and child support credits.[76]

(5) The court or administrative officer may deviate from the presumptive amount only for reasons set forth in state statute and must provide a written basis for the deviation.

Changes in Washington's Child Support Schedule

Several changes were made to the WSCSS based on legislation adopted after the recommendations of the 2005 Child Support Schedule Workgroup.[77] In 2009, the Legislature passed ESHB 1794, which made changes to the Child Support Schedule and adopted many of the recommendations of the 2007 Child Support Schedule Workgroup.[78]

Until October 1, 2009[79] the Washington State Child Support Schedule provided that an obligated parent's support obligation should not reduce his or her net monthly income below the one person need standard found in WAC 388-478-0015, except for the presumptive minimum obligation of $25 per month per child. The child support schedule Economic Table began at a combined monthly net income (CMNI) of $600 and continued to a CMNI of $7,000. The support obligation from the Economic Table was presumptive for CMNIs between $600 and $5,000 but only advisory for CMNIs above $5,000.

Effective October 1, 2009, two bills adopted by the Washington legislature based on recommendations of the 2007 Child Support Schedule Workgroup made significant changes to the WSCSS. ESHB 1794 (Chapter 84, Laws of 2009) made changes to the sections containing the economic table[80], limitations[81], income determination[82], deviations[83], and the allocation of health care [84]costs. SHB 1845 (Chapter 476, Laws of 2009) made changes regarding the requirements for medical support obligations in child support orders.

RCW 26.19.065 now provides that the support obligation shall not reduce the obligated parent's net income below the self-support reserve of one hundred twenty-five percent of

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[74] RCW 26.19.080.
[75] RCW 26.19.065
[76] WSCSS-Instructions 6/2010, Part V re Line 16 (Page 8)
[77] You can find the Report of the 2005 Workgroup at http://www.dshs.wa.gov/esa/division-child-support/reports
[78] ESHB 1794 (Chapter 84, Laws of 2009)
[79] The effective date of ESHB 1794.
[80] RCW 26.19.020
[81] RCW 26.19.065
[82] RCW 26.19.071
[83] RCW 26.19.075
[84] RCW 26.19.080

the federal poverty level. Also, ESHB 1794 increased the presumptive minimum obligation to $50 per month per child. The support schedule Economic Table now starts at a CMNI of $1,000 and continues to a CMNI of $12,000. The schedule is presumptive for all incomes between these amounts.

Additional changes were made in the calculation of health care expenses. Under previous law,[85] both parents were responsible for a proportional share of health care expenses exceeding 5% of the Basic Support Obligation. Under ESHB 1794, health care costs are no longer included in the economic table and all health care costs are divided between the parents based on their proportional share of the Basic Child Support Obligation.

Purpose of DCS Order Review

In 2005, the federal government expressed concern regarding the completeness of Washington's reviews of its guidelines. In response, the Washington Legislature established in statute a process for its reviews to be conducted by workgroups (2SHB 1009, Chapter 313, Laws of 2007). The first review under the statute was conducted in 2007, the second review was conducted in 2011, and the next review occurs in 2015. Section 6 of 2SHB 1009 was codified as RCW 26.19.026, and directed JLARC to: (1) review the efforts of the 2007 child support workgroup; (2) summarize research on the cost of raising children; and (3) analyze the current child support data collected by DSHS in order to review child support orders that deviate from the state's guideline. The JLARC report was to be submitted by July 1, 2010, and it was submitted to the Legislature in January 2010.[86]

Two recommendations were made in JLARC's final report: (1) the Workgroups convened under RCW 26.19.05 should use data obtained directly from court and administrative orders to conduct the federally required quadrennial review; and (2) the Legislature should eliminate all statutory references to the Child Support Summary Order Report.

In accordance with the recommendations of JLARC and in support of the 2011 Child Support Schedule Workgroup, the DCS completed a review of child support orders by sampling administrative and court orders entered during the period of August 2006 to July 2010. The Final Report of the 2011 Child Support Schedule Workgroup was delivered to the Legislature on September 30, 2011.

To meet the federally required quadrennial review, the DCS conducted the 2014 order review by sampling administrative and court orders entered during the period of August 2010 to July 2014. This 2014 order review is intended to satisfy the review requirements of 45 CFR 302.56.

[85] Former RCW 26.19.080
[86] JLARC, January 5, 2010, *Review of Child Support Guidelines – Report 10-1*.

Overview of the Order Sample

Sampling

The sampling frame for this study includes all Washington orders (a total of 177,211 court and administrative orders) entered during the four year period from August 1, 2010 through July 31, 2014. This universe consisted of imaged order documents for child support cases in the active DCS caseload, as well as imaged orders maintained by the Washington State Support Registry (WSSR) for payment processing only. A simple random sample of 1,061 orders was selected from the sampling frame. The sample size was determined to give an estimated average income of NCPs at 95% confidence interval with marginal error within 5%. It is also good enough to have the estimated order deviation rate at at 95% confidence interval with marginal error within 5%.

The 1,061 sample orders were randomly assigned to volunteer Support Enforcement Officers (SEOs). An on-line tracking tool was developed to allow SEOs to input their responses to the questionnaire (see appendix II for the detailed questionnaire). SEOs completed 1,046 valid reviews by the end of the review period.

WSCSS Guideline Usage

The WSCSS Worksheet Pamphlet effective October 1, 2009[87] contains Definitions and Standards, Instructions, the Economic Table and a blank Worksheet; *having that pamphlet available will assist greatly in understanding this section.*

Part I of the Worksheet[88] is used to calculate the income of each parent according to RCW 26.19.071. After calculating the combined monthly net income of the parents, one finds the Basic Support Obligation (line 5) for each child in the Economic Table. The Basic Support Obligation is divided between the parents based on their proportional share of the income (line 6).

Line 7 of the Worksheet shows each parent's Basic Support Obligation without consideration of any low income limitations. Line 8 allows the application of low-income limitations when appropriate, and then Line 9 shows each parent's Basic Support Obligation. In some cases, the Basic Support Obligation will equal the Standard Calculation on line 17, but if there are health care, day care, and/or special child rearing expenses for the children, the Standard Calculation may be different. The Standard Calculation is the amount that is obtained by applying the guideline standards.

[87] Available online on the 2015 Workgroup's webpage at https://www.dshs.wa.gov/esa/division-child-support/2015-child-support-schedule-materials

[88] The Worksheet is developed by the Administrative Office of the Courts under RCW 26.19.050.

In certain cases, the presumptive transfer payment which is reflected by the Standard Calculation has been changed because of a deviation, which must be granted by the judge and must be supported by findings of fact. In those cases, the Transfer Payment ordered will be higher or lower than the Standard Calculation.

In some cases, the limitations contained in RCW 26.19.065 may result in a Standard Calculation which is different from the Basic Support Obligation found on Line 7. This is not considered a deviation, because the limitation is part of the process of arriving at the Standard Calculation.

Exploratory Data Analysis

Out of the overall 1,046 orders, there are 469, or 44.8%, administrative orders and 577, or 55.2%, court orders (Table 1). The majority of the orders are IV-D orders (85.1%) and the father is the NCP on the order (80.5%).

For the overall sample, the median NCP monthly net income is $1,550 and the order amount is $212, representing 13.7 percent of the noncustodial parent's income.

The income levels and the monthly order amount are different depending upon whether the order is an administrative order or a court order, a IV-D order or a non-IV-D order, a father as an NCP or a mother as an NCP (Table 1). NCPs with IVD orders earn twice less but have relatively higher child support obligations (14.1% vs. 9.8%) compared to NCPs with non-IVD orders. Fathers as NCPs have relatively higher child support obligations compared to mothers as NCPs (16.3% vs. 11.7%).

Table 1. NCP Median Net Income and Child Support Order Amount

Group	Number of Cases	Percent of Cases	Median NCP Monthly Net Income	Median CP Monthly Net Income	Median Monthly Order Amount	Percent of Order Amount in NCPs' Income
Overall Sample	**1,046**	**100.0%**	**$1,550.0**	**$1,385.3**	**$212.0**	**13.7%**
Admin Order	469	44.8%	$1,364.0	$1,351.0	$187.0	13.7%
Court Order	577	55.2%	$2,029.9	$1,601.0	$294.0	14.5%
IV-D Order	890	85.1%	$1,434.0	$1,353.0	$201.5	14.1%
Non-IV-D Order	156	14.9%	$3,569.0	$2,693.0	$348.7	9.8%
Father as NCP[89]	842	80.5%	$1,648.7	$1,364.0	$268.5	16.3%
Mother as NCP	202	19.3%	$1,351.0	$1,509.5	$158.0	11.7%

About two-thirds of the sample orders (68.1%) have only one child on the order and 23.4% of the orders have two children (Figure 1). The Schedule Economic Table

[89] Two orders did not identify a paying parent, don't know whether mother or father is the NCP.

incorporates the concept that additional children entail additional costs, while at the same time recognizing that two children are not always twice as costly as one. Figure 2 shows that the monthly child support obligation increases as the number of children increases. For the overall sample, the median award amount for one child is $187; for two children, the amount is $369.5; and for three children, the amount is $561. As the number of children increases, the NCP pays a larger proportion of his or her income for child support – 12.7% for one child, 19.6% for two children, and 28.1% for three children.

Figure 1. Number of Children on the Order

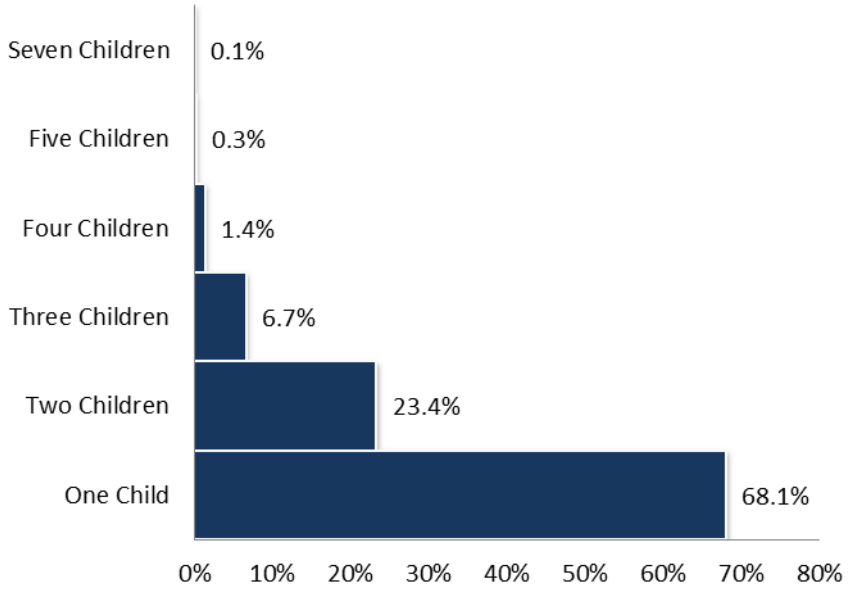


Figure 2. Monthly Order Amount vs. NCP Net Income by the Number of Children

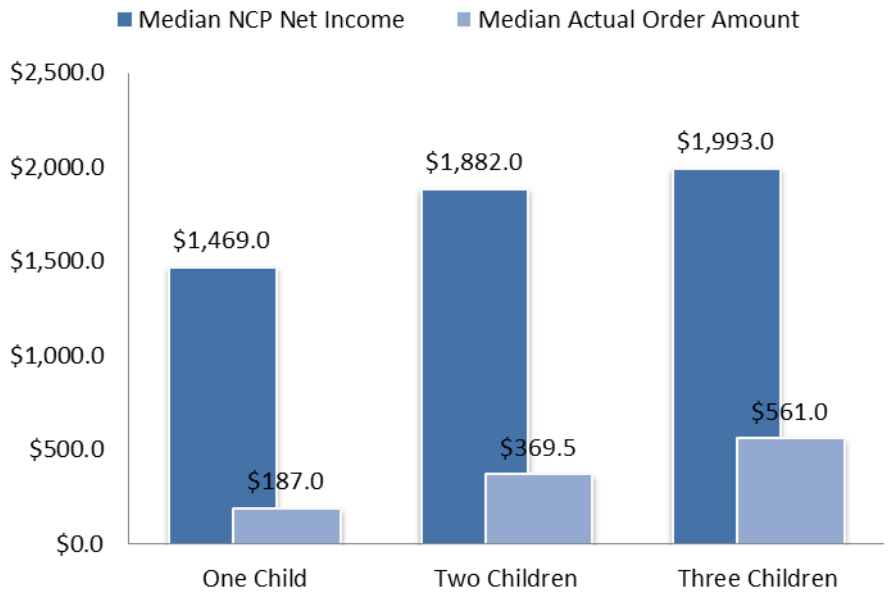


Figure 3 shows the distribution of combined monthly net income of the overall sample. For the overall sample, 71.9% of orders have CMNI between $1,000 and $5,000 and over 24.3% of orders have combined monthly net income more than $5,000. Before October 2009, the WSCSS Economic Table began at a CMNI of $600 and continued to a CMNI of $7,000 per month. The support obligation was presumptive for CMNI between $600 and $5,000 and was advisory above that level. The pre-October 2009 Economic Table did not provide a presumptive support amount for cases with CMNI over $5,000.[90]

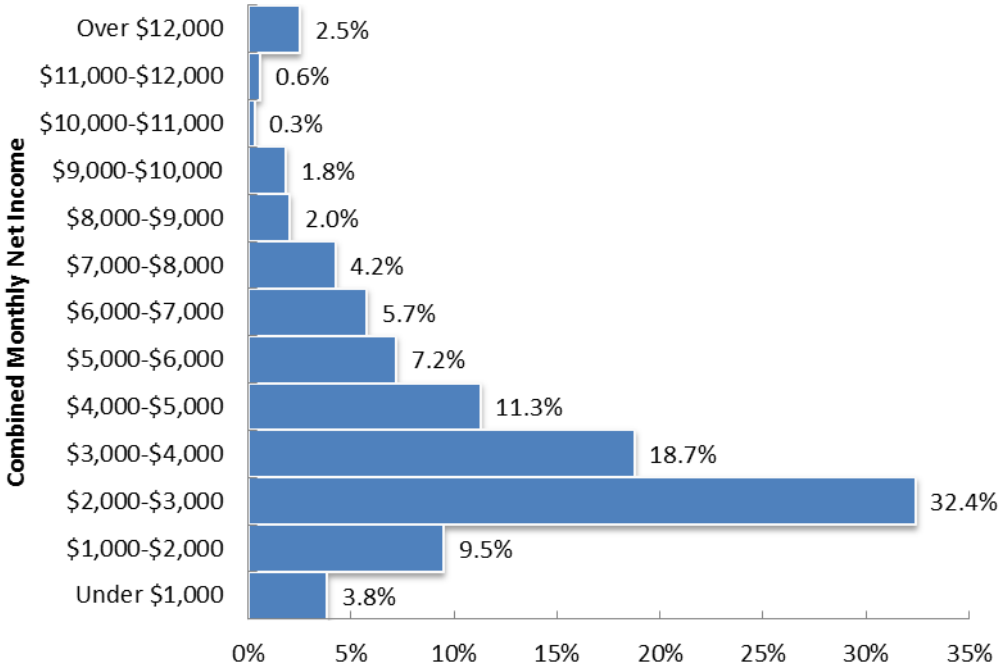
The new child support schedule under ESHB 1794,[91] which took effect on October 1, 2009, updated the Economic Table. It now provides presumptive support amounts for CMNI from $1,000 to $12,000. The sample shows that 93.7% of orders have CMNI falling within the income range of the new Economic Table. About 6% of the orders have CMNI of less than $1,000 or greater than $12,000. However, only 361 cases, or

[90] The prior version of RCW 26.19.065 provided the following guidance for income above five thousand and seven thousand dollars: "In general setting support under this paragraph does not constitute a deviation. The economic table is presumptive for combined monthly net incomes up to and including five thousand dollars. When combined monthly net income exceeds five thousand dollars, support shall not be set at an amount lower than the
presumptive amount of support set for combined monthly net incomes of five thousand dollars unless the court finds a reason to deviate below that amount. The economic table is advisory but not presumptive for combined monthly net income that exceeds five thousand dollars. When combined monthly net income exceeds seven thousand dollars, the court may set support at an advisory amount of support set for combined monthly net incomes between five thousand and seven thousand dollars or the court may exceed the advisory amount of support for combined monthly net income of seven thousand dollars upon written findings."

[91] (Chapter 84, Laws of 2009).

34.5%, of the overall sample, derived the CMNI using actual income for both the NCP and CP. The other cases in the sample use imputed income for one or both parents.[92]

Figure 3. Distribution of Combined Monthly Net Income



[92] Section 3 of ESHB 1794 amended RCW 26.19.071(4) and set out for the first time a hierarchy of imputation methods to be used when records of a parent's actual earnings were not available. Prior to October 1, 2009, the WSCSS did not contain specific guidance for imputing income. The term "imputation" covered a wide variety of methods for determining a parent's monthly income, some of which would not fit the current definition or method.

Order Deviation

Deviation Criteria in the Washington State Child Support Schedule

Since 1989, federal law has required statewide guidelines for child support. Each state has the authority to determine its own specific guidelines. All court and administrative orders that establish or modify child support must be based upon the guidelines, and a deviation is allowed only for a reason set forth in state statute and must be based on a written justification. As part of the federally mandated quadrennial review, each state must review child support award data to determine the frequency of deviations from the state's guidelines and to ensure that deviations from the guidelines are limited.

The WSCSS provides a non-exclusive list of standards for deviation from the Standard Calculation in RCW 26.19.075, including: (1) sources of income and tax planning; (2) nonrecurring income; (3) debt and high expenses; (4) residential schedule; and (5) children from other relationships. Appendix III sets out RCW 26.19.075 in full.

Deviation Rate

For purposes of the DCS 2014 Order Review, "deviation" is defined as a child support amount that differs from the Standard Calculation in an amount greater than $10.00 (to allow for rounding) with one or more reasons for deviation that meet the standards set forth in RCW 26.19.075.

Out of the total 1,046 orders reviewed, 219 orders deviated from the Standard Calculation resulting in a 20.9% deviation rate. Figure 4 shows that deviations in non-IV-D orders were more common (33.3%) than deviations in IV-D orders (18.8%). Court orders have a higher deviation rate (23.6%) than administrative orders (17.7%). The majority (95%) of the deviations were downward, reducing the child support obligation from the presumptive amount. Downward deviations average $229.60 per month.

Figure 4. Deviation Rates

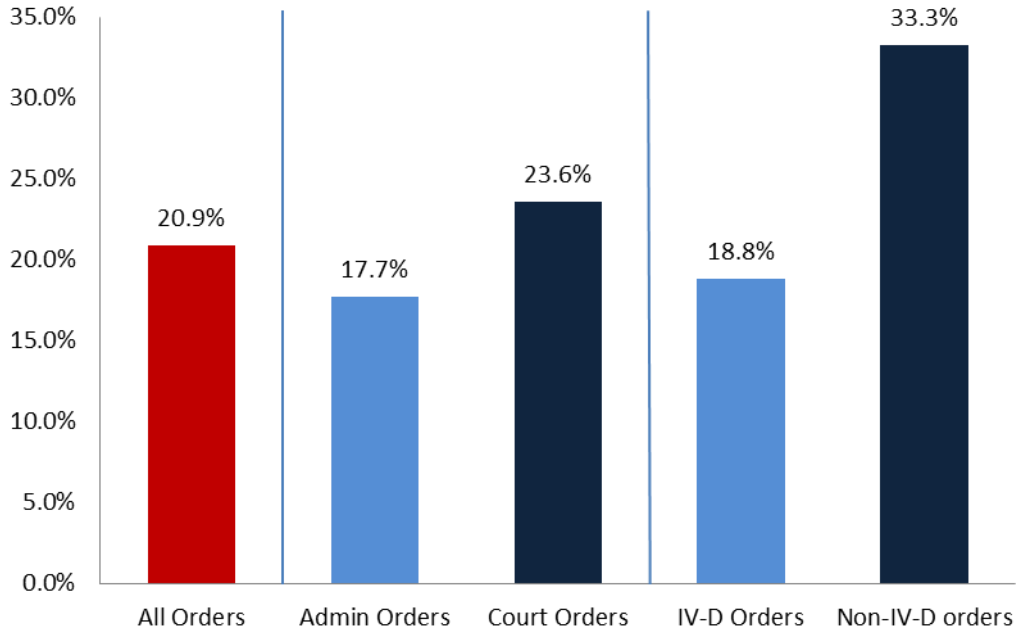
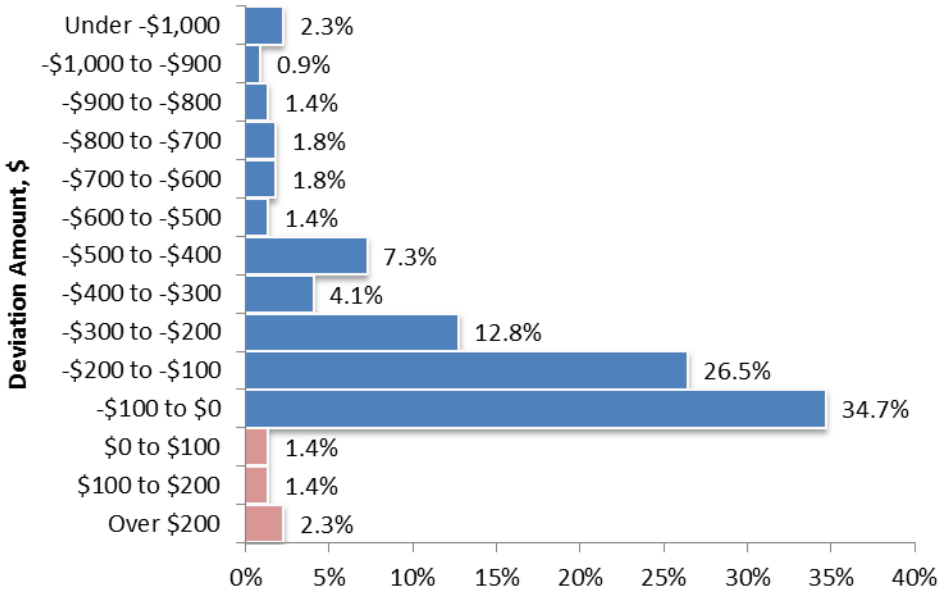


Figure 5 displays the detailed distribution of deviation amounts in the 219 orders deviated from the Standard Calculation. About two-thirds of the deviations (61.2%) reduce the order amount from the presumptive amount in the range of $0 to $200. There are 21 orders, or 9.6%, deviating downward from the Standard Calculation by more than $500.

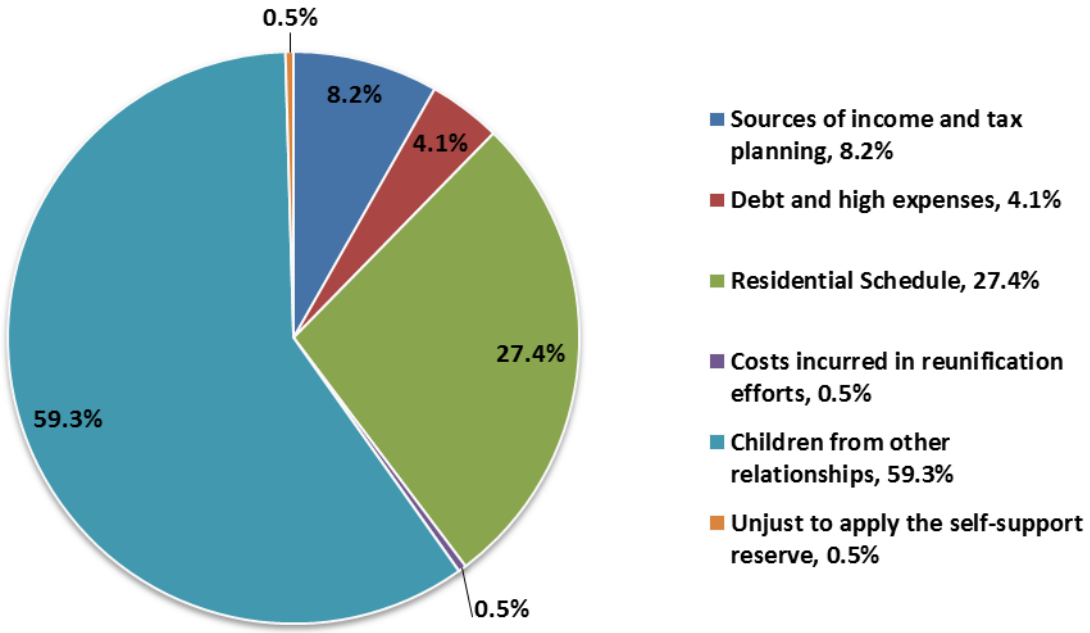
Figure 5. Distribution of Deviation Amount



Deviation Reasons

Figure 6 describes deviation reasons for the overall sample. Over half of deviations (59.3%) are due to children from other relationships. The order amount may deviate from the Standard Calculation when either or both of the parents have children from other relationships to whom the parent owes a duty of support. About one-third of deviations (27.4%) are due to the residential schedule. If the child spends a significant amount of time with the noncustodial parent, the court may consider a deviation from the Standard Calculation.[93] Therefore, two major reasons of deviation in Washington orders are children from other relationships and residential schedules, which account for 86.7% of the deviations. The rest of the deviations are for a variety of reasons such as sources of income and tax planning, extraordinary debt and high expenses, etc.

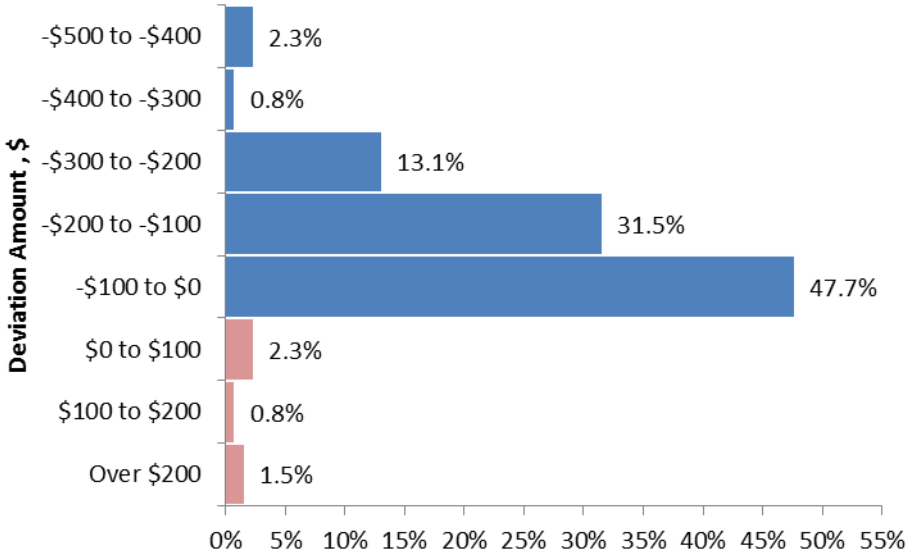
Figure 6. Deviation Reasons



[93] A deviation for the child's residential schedule is not allowed if it will result in insufficient funds in the custodial household or if the child is receiving temporary assistance for needy families.

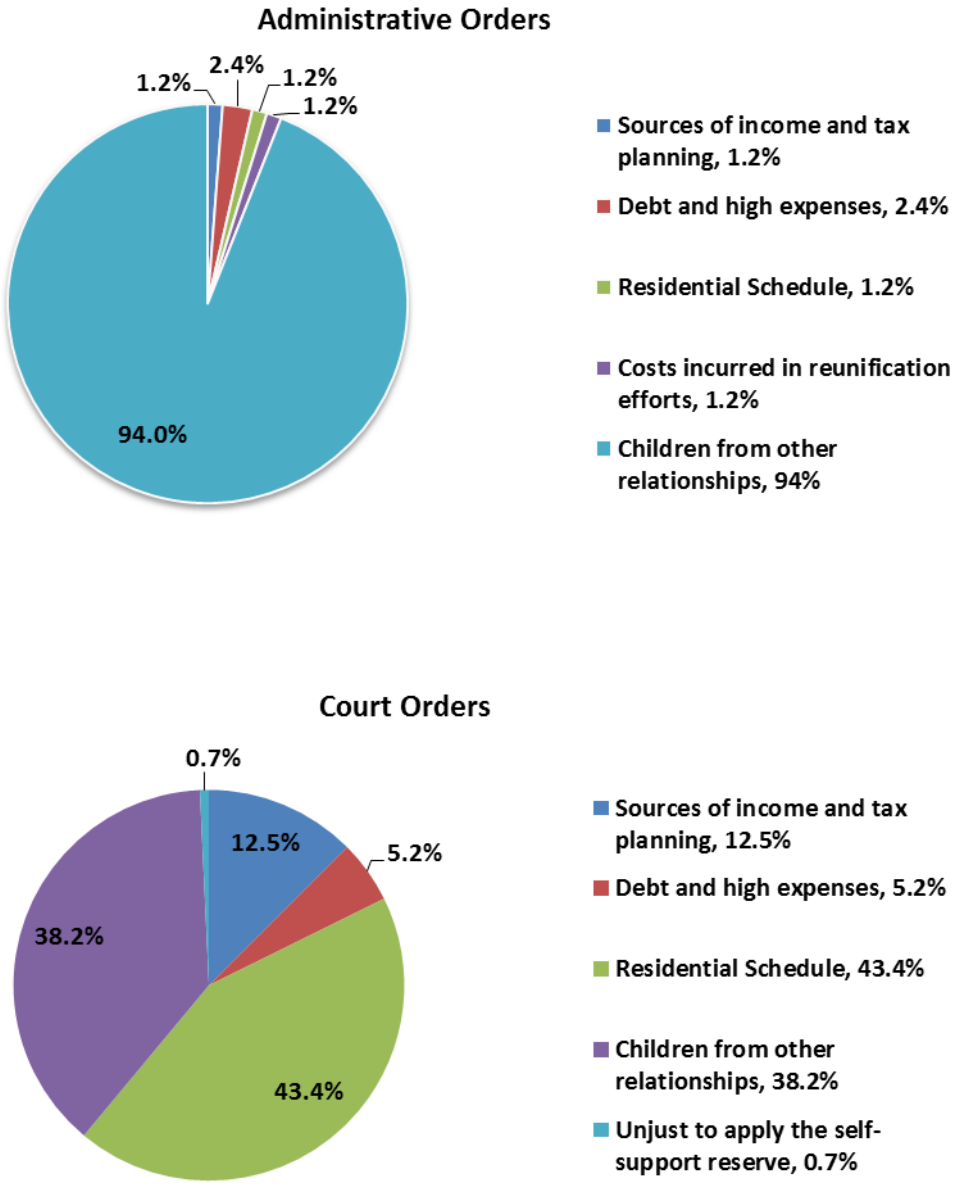
Figure 5A displays the detailed distribution of deviation amounts in the 130 orders due to children from other relationships. About four-fifths of the deviations (79.2%) reduce the order amount from the presumptive amount in the range of $0 to $200. There are 6 orders (about 5%) deviating upward from the Standard Calculation by no more than $200. No orders deviate downward from the Standard Calculation by more than $500 for children from other relationships.

Figure 5A. Distribution of Deviation Amount due to Children from Other Relationships



Deviation reasons vary between administrative orders and court orders (Figure 7). The existence of children from other relationships is the dominant (94%) reason for deviations in administrative orders. Only 1.2% of administrative orders deviate due to the criteria of residential schedule. For court orders, children from other relationships (38.2%) and residential schedule (43.4%) are the two major deviation reasons.

Figure 7. Deviation Reasons by Order Type



Adjustments and Limitations

Adjustments and Limitations Under the WSCSS

The WSCSS Worksheet is used to calculate each parent's child support obligation by proceeding through a series of steps, represented by the different parts of the Worksheet.

Part I of the Worksheet is used to calculate the Combined Monthly Net Income (CMNI) of the parents (Line 4). Using the CMNI and the number of children for whom support is being set, the Economic Table provides the monthly Basic Support Obligation in a per child amount and in a total monthly amount (line 5). Line 6 is used to calculate each parent's proportional share of the CMNI.

Part II of the Worksheet is then used to find each parent's "Basic Child Support Obligation without consideration of low income limitations" (Line 7 of the Worksheet). Lines 8a, 8b and 8c are used to apply any relevant adjustments to establish the "Basic Child Support Obligation after calculating applicable limitations" (Line 9 of the Worksheet). The amount on Line 9 is the presumptive support amount for each parent.

Part III of the Worksheet is used when there are Health Care, Day Care, and Special Child Rearing Expenses. This Part allocates each parent's proportional share of the expenses, and the result on Line 14 is each parent's obligation for Health Care, Day Care, and Special Expenses.

Part IV of the Worksheet determines the Gross Child Support Obligation on Line 15, which is the sum of line 9 (Basic Support Obligation) and line 14 (Obligation for Health Care, Day Care, and Special Expenses).

Part V of the Worksheet is used to calculate any credits that may be due for amounts actually being paid at the time of the calculation. Line 16d provides the Total Support Credits.

Part VI of the Worksheet provides the Standard Calculation, also known as the Presumptive Transfer Payment. Unless a deviation is granted, this presumptive support amount is the child support order amount.

As illustrated by the above description, "deviations" are distinguished from "adjustments" in that adjustments are made because of a limitation, and the application of an adjustment happens during the calculation of the Basic Support Obligation. A deviation is granted only after the calculation of the Standard Calculation, resulting in a Transfer Payment (also called the order amount) that is different from the Standard Calculation.

Low-Income Limitations

The WSCSS contains several low-income limitations, which operate to adjust the Basic Support Obligation so that the parent is allowed to retain a certain amount of his or her monthly net income, subject to the presumptive minimum support obligation (currently $50 per month per child; $25 per month per child prior to October 1, 2009). The application of these limitations is subject to a determination that it would be unjust to apply the limitation, based on a consideration of the best interests of the child. Prior to the October 1, 2009 changes,[94] the determination of "unjust to apply" was not a part of the law.

When the CMNI of both parties is less than $1,000, each parent's presumptive support obligation is $50 per child per month.[95] Prior to October 1, 2009, the WSCSS provided that when the parents' CMNI was less than $600, each parent's presumptive support obligation was $25 per child per month.

Other low-income limitations are based on the Self-Support Reserve.[96] Before October 1, 2009, this was called the Need Standard, based on the cash assistance need standard for one person.[97] RCW 26.19.065(2) now provides that when a parent's monthly net income is below the Self-Support Reserve of 125% of the federal poverty level, his or her presumptive support obligation is no less than $50 per month per child. Prior to October 1, 2009, the WSCSS provided that when a parent's monthly net income was less than $600, his or her presumptive support obligation was $25 per child per month.

In addition, RCW 26.19.065 provides that the Basic Support Obligation, excluding health care, day care, and special child-rearing expenses, shall not reduce the NCP's net income below the Self-Support Reserve, except for the presumptive minimum obligation of $50 per child per month. Prior to October 1, 2009, the law provided that the NCP's support obligation should not reduce his or her income below the one person need standard, except for the presumptive minimum obligation of $25 per child per month.

The final low-income limitation usually applies to noncustodial parents with many children, or at least with many families: RCW 26.19.065(1) provides that neither parent's child support obligation owed for all his or her biological or legal children may exceed 45 percent of his or her net income except for good cause (good cause includes, but is not limited to, possession of substantial wealth, children with day care expenses, special medical need, educational need, psychological need, and larger families). ESHB 1794

[94] The changes under ESHB 1794 took effect on October 1, 2009.
[95] RCW 26.19.020.
[96] RCW 26.19.065.
[97] See discussion *supra* in Section 1.2.

amended this section to provide that each child "is entitled to a pro rata share of the income available for support, but the court only applies the pro rata share to the children in the case before the court."

Other Adjustments

Other reasons that the Standard Calculation may differ from the Basic Support Obligation are:

- Health Care, Daycare, Or Special Expenses
- Child Support Credits
- Income above the Economic Table amounts

RCW 26.19.080 provides that health care costs, day care and special child rearing expenses, such as tuition and transportation costs for visiting purpose, are not included in the Economic Table. These expenses are to be shared by the parents in the same proportion as the basic child support obligation. Prior to October 1, 2009, the WSCSS provided that the amounts in the Economic Table were considered to include an amount for "ordinary medical expenses," but that "extraordinary medical expenses," defined as medical expenses that exceed five percent of the basic support obligation, were to be shared by the parents. ESHB 1794 did away with the distinction between ordinary and extraordinary medical expenses.

Child support credits are provided in cases where parents make direct payments to third parties for the cost of goods and services which are included in the Standard Calculation support obligation. When the WSCSS Worksheet contains these direct payments in Part III, the parent who pays for the shared expenses will receive credit by means of a lower transfer payment.

Finally, for parents with a CMNI that exceeds $12,000, the WSCSS provides that the court may exceed the maximum presumptive amount of support upon written findings of fact. See Section 2.3 and Footnote 31, *supra*, for a discussion of the way higher incomes were treated before October 2009.

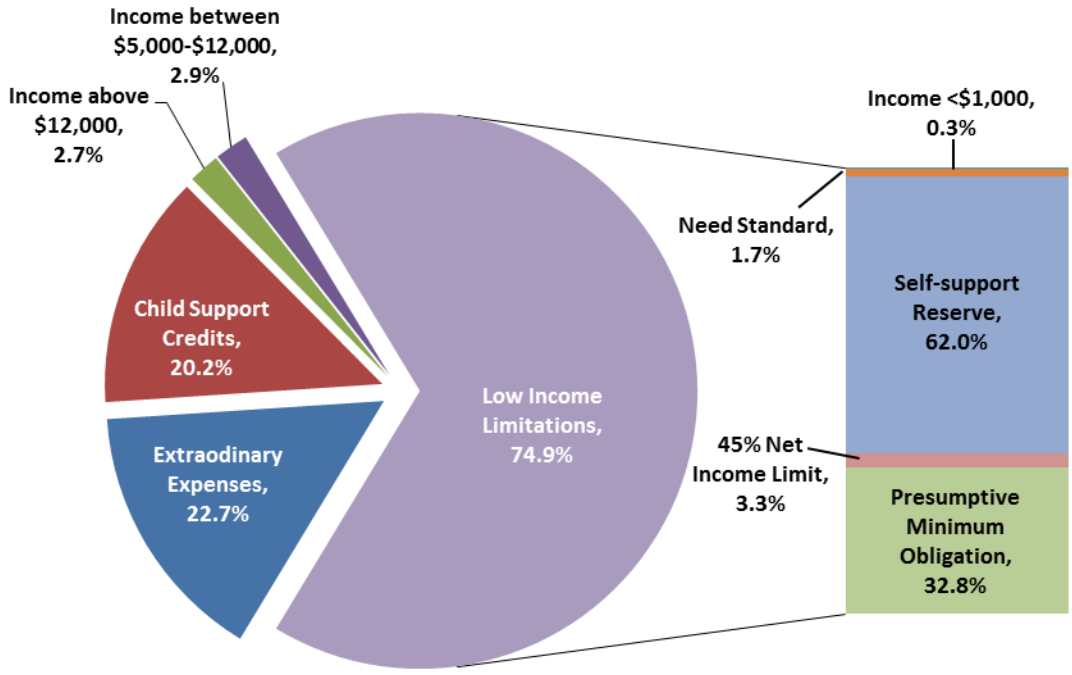
How Adjustments and Low Income Limitations are Applied in Washington State

For the overall sample, 485 orders out of the 1,046 orders, or 46.4%, apply adjustments to determine the presumptive order amounts. Administrative orders (49%) are more likely to apply adjustments than court orders (44.2%).

When reasons for adjustments were reviewed, it was found that 75.7% of adjustments were due to a single reason and 24.3% of adjustments were due to two to four reasons. Figure 8 shows that the primary reason for adjustments are low income limitations. 363 orders, or 74.9%, are adjusted for this reason. Extraordinary expenses and the application

of child support credits in part III of the WSCSS Worksheet are also commonly used, accounting for 22.7% and 20.2% of adjustments, respectively. Only 13 orders, or 2.7%, are adjusted due to a CMNI above $12,000. Another 14 orders (2.9%) are adjusted due to a CMNI greater than $5,000 but less than $12,000.[98]

Figure 8. Distribution of Adjustment Reasons



The application of the Self-Support Reserve (post October 2009) and Presumptive Minimum Obligation are the major reasons for the low income limitation adjustments (bar chart in Figure 8). Effective October 1, 2009, Washington State adopted the Self-Support Reserve as the basic subsistence level to determine adjustments due to low income limitations. Six orders (1.7%) were adjusted due to the use of the TANF need standard (pre-October 2009) On average, 6.7 orders per month were adjusted due to the application of the Self-Support Reserve for the period of October 2009 through July 2010, only about 4.7 orders per month were adjusted due to the same reason from August

[98] The percentage does not add up to 100% because some orders are adjusted for more than one reason.

2010 to July 2014. There were 119 out of 485 orders (32.8%) with adjustments that set support at the presumptive minimum order amount for reasons other than the Self-Support Reserve, Need Standard Limitation, 45% net income limitation, or CMNI less than $1,000 ($50 per month per child).

APPENDIX I - Order Review Definitions

Adjustment: A child support amount that differs from the Standard Calculation, not because of a Deviation, but because of the application of one or more Limitation Standards under the WSCSS applicable as of the date of the order. Adjustments differ from deviations as they are applied during the determination of the Standard Calculation / Presumptive Transfer Payment. They are in effect an expected application of the established guidelines.

Average: Arithmetic mean, unless otherwise noted.

Basic Support Obligation (BSO): The monthly child support obligation determined from the economic table based on the parties' combined monthly net income and the number of children for who support is owed. RCW 26.19.011(1). For purposes of this review, Basic Support Obligation also means the guideline support obligation without consideration of income limitations, extraordinary expenses, or child support credits.

CMNI: Combined Monthly Net Income, Line 4 on the WSCSS Worksheet.

Deviation: A child support amount that differs from the Standard Calculation. RCW 26.19.011(4). For purposes of this review, a support order contains a Deviation when the Final Transfer Payment differs from the Standard Calculation / Presumptive Transfer Payment in an amount greater than $10.00 (to allow for rounding) and the reasons for deviation meet standards set forth in the WSCSS guidelines and RCW 26.19.075.

Final Transfer Payment: the amount ordered by the court/ALJ to be paid by the noncustodial parent.

IV-D Orders: Support orders that are enforced by the Division of Child Support (DCS) due to the payment of public assistance monies or application for services from either party. This abbreviation came into use because DCS operates its child support program under Title IV-D of the Social Security Act.

Median: The median is the middle value of a set of data containing an odd number of values, or the average of the two middle values of a set of data with an even number of values. In other words, half of data set has values below the median and half of the data set has values above the median. The median is a useful number in cases where the distribution has very large extreme values (e.g., income) which would otherwise skew the data.

Non-IV-D Orders: Support orders that direct the noncustodial parent (NCP) to make child support payments either through the Washington State Support Registry (WSSR) or

directly to the custodial parent (CP), and DCS has no existing case for the parties or no application for services from either party.

Standard Calculation: the presumptive amount of child support owed as determined from the child support schedule before the court considers any reasons for deviation. RCW 26.19.011(8). This is sometimes also called the Presumptive Transfer Payment.

Support Transfer Payment: the amount of money the court orders one parent to pay to another parent or custodian for child support after determination of the Standard Calculation and deviations. If certain expenses or credits are expected to fluctuate and the order states a formula or percentage to determine the additional amount or credit on an ongoing basis, the term "support transfer payment" does not mean the additional amount or credit. RCW 26.19.011(9). This may also be called the Final Transfer Payment, or just the Transfer Payment.

WSCSS: The Washington State Child Support Schedule, codified as Chapter 26.19 RCW.

APPENDIX II - Order Review Questionnaire

A. General Descriptive Information (Washington Orders)

1) IV-D Number _____
   a) Type of case (Current TANF, Subro-only TANF, Non TANF /Former Assistance, Non TANF / Never Assistance, FC-TANF, FC-SO, Medicaid, PSO, Non-IVD *alternate payer*)
2) Date of Order _____
3) Order or Cause Number _____
4) Type of Order
   a. Court b. Administrative
   - Drop-down list of all SEMS Order Types, both court orders & admin orders
5) Location (FIP Code) of Order _____
6) Which Parent is NCP? Father/Mother
7) Worksheets completed by: a.) DCS b.) OAH c.) Prosecutor d.) Private Attorney e.) Pro Se

B. Income of Parties

1) Monthly Net Income of Noncustodial Parent $_____
   a. Actual Y/N
   b. Imputed Y/N
   c. Median Net Y/N
2) Monthly Net Income of Custodial Parent $_____
   a. Actual Y/N
   b. Imputed Y/N
   c. Median Net Y/N

C. Child Support

1) Standard Calculation/Presumptive Transfer Payment Amount $_____
2) Parent Ordered to Pay…Mother or Father
3) Support Amount Ordered $_____
4) Number of Children _____
   a. (If only one child, proceed to (5) now)
   b. (If more than one child, Undifferentiated Support? Y/N)
      i. (If Y – show Ages of Children *at time of order*)
      ii. (If N – show Ages of Children and Amount Ordered Per Child)

5) Ages of Children *(at time of order)*/Amount per Child

c. Child 1 age____ Amount Ordered $_____
d. Child 2 age____ Amount Ordered $_____
e. Child 3 age____ Amount Ordered $_____
f. Child 4 age____ Amount Ordered $_____
g. Child 5 age____ Amount Ordered $_____

D. Deviation from Standard Calculation

1) Was there a deviation?; Y/N
2) Reasons for Deviation from Standard Calculation
   a) Income of a new spouse or new domestic partner of the parent requesting a deviation for other reasons Y/N
   b) Income of other adults in the household of the parent requesting a deviation for other reasons Y/N
   c) Child support actually paid or received for other child(ren) from other relationships Y/N
   d) Gifts Y/N
   e) Prizes Y/N
   f) Possession of wealth Y/N
   g) Extraordinary income of child(ren) Y/N
   h) Tax planning resulting in greater benefit to the child(ren) Y/N
   i.) Income from overtime or second jobs that was excluded from income of the parent requesting a deviation for other reasons Y/N
   j) A nonrecurring source of income Y/N
   k) Extraordinary debt not voluntarily incurred Y/N
   l) A significant disparity in the living costs of the parents due to conditions beyond their control Y/N
   m) Special needs of disabled child(ren) Y/N
   n) Special medical, educational or psychological needs of the child(ren) Y/N
   o) The child(ren) spend(s) a significant amount of time with the parent who is obligated to make a support transfer payment. The deviation does not result in insufficient funds in the receiving parent's household to meet the basic needs of the child(ren). The child(ren) do(es) not receive public assistance. Y/N
   p) Costs anticipated or incurred in compliance with reunification efforts or voluntary placement agreement Y/N

q) Child(ren) from Other Relationships Y/N

* Method Used to Calculate Children Factors

i.) Whole Family Formula Y/N

ii.) Blended Family Formula Y/N

iii.) Other Y/N Describe: _____

r) Costs incurred or anticipated to be incurred by the parents in compliance with court-ordered reunification efforts or under a voluntary placement agreement with an agency supervising the child(ren) Y/N

s) The obligor established that it is unjust to apply the presumptive minimum payment (*$50 pmpc post-10/09)* Y/N

i.) The court/tribunal found that NCP had rebutted the presumption that s/he should pay the presumptive minimum obligation and entered a zero support order.

ii.) The court/tribunal found that NCP had rebutted the presumption that s/he should pay the presumptive minimum obligation and ordered that NCP should pay an amount which is less than the presumptive minimum but more than zero.

t) The obligee established that it is unjust to apply the self-support reserve *(post-10/09)* Y/N

u) Agreement of the parties Y/N *(not by itself adequate reason for deviation - but may be found in some orders)*

v) Other reason(s) for deviation Y/N *(describe)*

_____

_____

w) No reason stated Y/N

Comment for (q(iii), c., or v. above:

_____

E. (1) Adjustments of Support Obligation Y/N

2) Income Limitations

a) Combined income less than $600 *(pre-10/09)* Y/N

b) Combined income less than $1000 *(post-10/09)* Y/N

c) NCP Need Standard limitation applied *(pre-10/09)* Y/N

d) NCP Self-Support Reserve applied *(125% of federal poverty guideline--post-10/09)* Y/N

e) 45% net income limitation for NCP applied Y/N

f) Presumptive Minimum Obligation Ordered Y/N
($25 pmpc pre--10/09 / $50 pmpc post--10/09)

3) Extraordinary Health Care, Daycare, or Special Expenses Y/N
   *Health Care Y/N NCP ____ CP ____
   *Daycare Y/N NCP ____ CP ____
   *Special Expenses Y/N NCP ____ CP ____
4) Child Support Credits Y/N
   *Monthly Health Care Expenses Credit Y/N NCP ____ CP ____
   *Day Care and Special Expenses Credit Y/N NCP ____ CP ____
   *Other Ordinary Expenses Credit Y/N NCP ____ CP ____
5) Combined Monthly Net Income greater than $5,000 but less than $7,000 *(pre-10/09)* Y/N
6) Combined Monthly Net Income greater than $7000 *(pre-10/09)* Y/N
7) Combined Monthly Net Income greater than $12,000 *(post-10/09)* Y/N

F. Health Care Provisions

1) NCP to provide health insurance Y/N
2) CP to provide health insurance Y/N
3) Both parties to provide Y/N
4) CP's Contribution to NCP Premium Included in Worksheet, and in Standard Calculation/Transfer Payment *(post-10/09*) Y/N
5) Not Addressed Y/N

General Comments: _____

_____

APPENDIX III - Relevant Statutes

RCW 26.19.065

Standards for establishing lower and upper limits on child support amounts.

(1) **Limit at forty-five percent of a parent's net income.** Neither parent's child support obligation owed for all his or her biological or legal children may exceed forty-five percent of net income except for good cause shown.

(a) Each child is entitled to a pro rata share of the income available for support, but the court only applies the pro rata share to the children in the case before the court.

(b) Before determining whether to apply the forty-five percent limitation, the court must consider whether it would be unjust to apply the limitation after considering the best interests of the child and the circumstances of each parent. Such circumstances include, but are not limited to, leaving insufficient funds in the custodial parent's household to meet the basic needs of the child, comparative hardship to the affected households, assets or liabilities, and any involuntary limits on either parent's earning capacity including incarceration, disabilities, or incapacity.

(c) Good cause includes, but is not limited to, possession of substantial wealth, children with day care expenses, special medical need, educational need, psychological need, and larger families.

(2) **Presumptive minimum support obligation.** (a) When a parent's monthly net income is below one hundred twenty-five percent of the federal poverty guideline, a support order of not less than fifty dollars per child per month shall be entered unless the obligor parent establishes that it would be unjust to do so in that particular case. The decision whether there is a sufficient basis to deviate below the presumptive minimum payment must take into consideration the best interests of the child and the circumstances of each parent. Such circumstances can include leaving insufficient funds in the custodial parent's household to meet the basic needs of the child, comparative hardship to the affected households, assets or liabilities, and earning capacity.

(b) The basic support obligation of the parent making the transfer payment, excluding health care, day care, and special child-rearing expenses, shall not reduce his or her net income below the self-support reserve of one hundred twenty-five percent of the federal poverty level, except for the presumptive minimum payment of fifty dollars per child per month or when it would be unjust to apply the self-support reserve limitation after considering the best interests of the child and the circumstances of each parent. Such circumstances include, but are not limited to, leaving insufficient funds in the custodial parent's household to meet the basic needs of the child, comparative hardship to the affected households, assets or liabilities, and earning capacity. This section shall not be construed to require monthly substantiation of income.

(3) **Income above twelve thousand dollars.** The economic table is presumptive for combined monthly net incomes up to and including twelve thousand dollars. When

combined monthly net income exceeds twelve thousand dollars, the court may exceed the presumptive amount of support set for combined monthly net incomes of twelve thousand dollars upon written findings of fact.

RCW 26.19.071

Standards for determination of income

(1) **Consideration of all income.** All income and resources of each parent's household shall be disclosed and considered by the court when the court determines the child support obligation of each parent. Only the income of the parents of the children whose support is at issue shall be calculated for purposes of calculating the basic support obligation. Income and resources of any other person shall not be included in calculating the basic support obligation.

(2) **Verification of income.** Tax returns for the preceding two years and current paystubs shall be provided to verify income and deductions. Other sufficient verification shall be required for income and deductions which do not appear on tax returns or paystubs.

(3) **Income sources included in gross monthly income.** Except as specifically excluded in subsection (4) of this section, monthly gross income shall include income from any source, including:

(a) Salaries;

(b) Wages;

(c) Commissions;

(d) Deferred compensation;

(e) Overtime, except as excluded for income in subsection (4)(h) of this section;

(f) Contract-related benefits;

(g) Income from second jobs, except as excluded for income in subsection (4)(h) of this section;

(h) Dividends;

(i) Interest;

(j) Trust income;

(k) Severance pay;

(l) Annuities;

(m) Capital gains;

(n) Pension retirement benefits;

(o) Workers' compensation;

(p) Unemployment benefits;

(q) Maintenance actually received;

(r) Bonuses;

(s) Social security benefits;

(t) Disability insurance benefits; and

(u) Income from self-employment, rent, royalties, contracts, proprietorship of a

business, or joint ownership of a partnership or closely held corporation.

(4) **Income sources excluded from gross monthly income.** The following income and resources shall be disclosed but shall not be included in gross income:

(a) Income of a new spouse or new domestic partner or income of other adults in the household;

(b) Child support received from other relationships;

(c) Gifts and prizes;

(d) Temporary assistance for needy families;

(e) Supplemental security income;

(f) Disability lifeline benefits;

(g) Food stamps; and

(h) Overtime or income from second jobs beyond forty hours per week averaged over a twelve-month period worked to provide for a current family's needs, to retire past relationship debts, or to retire child support debt, when the court finds the income will cease when the party has paid off his or her debts.

Receipt of income and resources from temporary assistance for needy families, supplemental security income, disability lifeline benefits, and food stamps shall not be a reason to deviate from the standard calculation.

(5) **Determination of net income.** The following expenses shall be disclosed and deducted from gross monthly income to calculate net monthly income:

(a) Federal and state income taxes;

(b) Federal insurance contributions act deductions;

(c) Mandatory pension plan payments;

(d) Mandatory union or professional dues;

(e) State industrial insurance premiums;

(f) Court-ordered maintenance to the extent actually paid;

(g) Up to five thousand dollars per year in voluntary retirement contributions actually made if the contributions show a pattern of contributions during the one-year period preceding the action establishing the child support order unless there is a determination that the contributions were made for the purpose of reducing child support; and

(h) Normal business expenses and self-employment taxes for self-employed persons. Justification shall be required for any business expense deduction about which there is disagreement.

Items deducted from gross income under this subsection shall not be a reason to deviate from the standard calculation.

(6) **Imputation of income.** The court shall impute income to a parent when the parent is voluntarily unemployed or voluntarily underemployed. The court shall determine whether the parent is voluntarily underemployed or voluntarily unemployed based upon that parent's work history, education, health, and age, or any other relevant factors. A court shall not impute income to a parent who is gainfully employed on a full-time basis,

unless the court finds that the parent is voluntarily underemployed and finds that the parent is purposely underemployed to reduce the parent's child support obligation. Income shall not be imputed for an unemployable parent. Income shall not be imputed to a parent to the extent the parent is unemployed or significantly underemployed due to the parent's efforts to comply with court-ordered reunification efforts under chapter 13.34 RCW or under a voluntary placement agreement with an agency supervising the child. In the absence of records of a parent's actual earnings, the court shall impute a parent's income in the following order of priority:

(a) Full-time earnings at the current rate of pay;

(b) Full-time earnings at the historical rate of pay based on reliable information, such as employment security department data;

(c) Full-time earnings at a past rate of pay where information is incomplete or sporadic;

(d) Full-time earnings at minimum wage in the jurisdiction where the parent resides if the parent has a recent history of minimum wage earnings, is recently coming off public assistance, disability lifeline benefits, supplemental security income, or disability, has recently been released from incarceration, or is a high school student;

(e) Median net monthly income of year-round full-time workers as derived from the United States bureau of census, current population reports, or such replacement report as published by the bureau of census.

RCW 26.19.075

Standards for deviation from the standard calculation.

(1) Reasons for deviation from the standard calculation include but are not limited to the following:

(a) **Sources of income and tax planning.** The court may deviate from the standard calculation after consideration of the following:

(i) Income of a new spouse or new domestic partner if the parent who is married to the new spouse or in a partnership with a new domestic partner is asking for a deviation based on any other reason. Income of a new spouse or new domestic partner is not, by itself, a sufficient reason for deviation;

(ii) Income of other adults in the household if the parent who is living with the other adult is asking for a deviation based on any other reason. Income of the other adults in the household is not, by itself, a sufficient reason for deviation;

(iii) Child support actually received from other relationships;

(iv) Gifts;

(v) Prizes;

(vi) Possession of wealth, including but not limited to savings, investments, real estate holdings and business interests, vehicles, boats, pensions, bank accounts, insurance plans,

or other assets;

(vii) Extraordinary income of a child;

(viii) Tax planning considerations. A deviation for tax planning may be granted only if the child would not receive a lesser economic benefit due to the tax planning; or

(ix) Income that has been excluded under RCW 26.19.071(4)(h) if the person earning that income asks for a deviation for any other reason.

(b) **Nonrecurring income.** The court may deviate from the standard calculation based on a finding that a particular source of income included in the calculation of the basic support obligation is not a recurring source of income. Depending on the circumstances, nonrecurring income may include overtime, contract-related benefits, bonuses, or income from second jobs. Deviations for nonrecurring income shall be based on a review of the nonrecurring income received in the previous two calendar years.

(c) **Debt and high expenses.** The court may deviate from the standard calculation after consideration of the following expenses:

(i) Extraordinary debt not voluntarily incurred;

(ii) A significant disparity in the living costs of the parents due to conditions beyond their control;

(iii) Special needs of disabled children;

(iv) Special medical, educational, or psychological needs of the children; or

(v) Costs incurred or anticipated to be incurred by the parents in compliance with court-ordered reunification efforts under chapter 13.34 RCW or under a voluntary placement agreement with an agency supervising the child.

(d) **Residential schedule.** The court may deviate from the standard calculation if the child spends a significant amount of time with the parent who is obligated to make a support transfer payment. The court may not deviate on that basis if the deviation will result in insufficient funds in the household receiving the support to meet the basic needs of the child or if the child is receiving temporary assistance for needy families. When determining the amount of the deviation, the court shall consider evidence concerning the increased expenses to a parent making support transfer payments resulting from the significant amount of time spent with that parent and shall consider the decreased expenses, if any, to the party receiving the support resulting from the significant amount of time the child spends with the parent making the support transfer payment.

(e) **Children from other relationships.** The court may deviate from the standard calculation when either or both of the parents before the court have children from other relationships to whom the parent owes a duty of support.

(i) The child support schedule shall be applied to the mother, father, and children of the family before the court to determine the presumptive amount of support.

(ii) Children from other relationships shall not be counted in the number of children for purposes of determining the basic support obligation and the standard calculation.

(iii) When considering a deviation from the standard calculation for children from

other relationships, the court may consider only other children to whom the parent owes a duty of support. The court may consider court-ordered payments of child support for children from other relationships only to the extent that the support is actually paid.

(iv) When the court has determined that either or both parents have children from other relationships, deviations under this section shall be based on consideration of the total circumstances of both households. All child support obligations paid, received, and owed for all children shall be disclosed and considered.

(2) All income and resources of the parties before the court, new spouses or new domestic partners, and other adults in the households shall be disclosed and considered as provided in this section. The presumptive amount of support shall be determined according to the child support schedule. Unless specific reasons for deviation are set forth in the written findings of fact and are supported by the evidence, the court shall order each parent to pay the amount of support determined by using the standard calculation.

(3) The court shall enter findings that specify reasons for any deviation or any denial of a party's request for any deviation from the standard calculation made by the court. The court shall not consider reasons for deviation until the court determines the standard calculation for each parent.

(4) When reasons exist for deviation, the court shall exercise discretion in considering the extent to which the factors would affect the support obligation.

(5) Agreement of the parties is not by itself adequate reason for any deviations from the standard calculation.

Appendix VI

2015 CHILD SUPPORT SCHEDULE WORKGROUP GROUND RULES[99]

- Minutes
- Consensus decision making
- Courteous communication
- Workgroup time belongs to the workgroup
- Everyone participates
    - Raise hands\cards to speak
    - Webex-raise
- All ideas deserve discussion
- Listen and ask questions
- Meet deadlines and commitments
- Each member will support workgroup recommendations
- Let people finish \ Don't interrupt

[99] These Ground Rules can be found on the Materials Page for the 2015 Workgroup at https://www.dshs.wa.gov/sites/default/files/ESA/dcs/documents/15CSWgroundrules.pdf

APPENDIX VII

PROPOSED STATUTORY LANGUAGE FOR RECOMMENDED CHANGES TO CHILD SUPPORT SCHEDULE (CHAPTER 26.19 RCW)

Appendix VIII

NOTES ABOUT TERMINOLOGY USED IN THIS REPORT

The Workgroup intends that any reference to a parenting plan or residential schedule should be interpreted as applying equally to parenting plans, residential schedules, residential provisions, custody orders and visitation provisions. When parties are in court for a dissolution, legal separation, parentage action or other court proceeding involving minor children, the statutes generally require the court to enter both a child support order and some kind of order establishing a plan for parenting the child, including allocation of parenting functions and residential time. There are many names used for what are essentially the same type of order:

- In actions under Chapter 26.09 RCW, the plan is called a parenting plan.
- For actions under the Uniform Parentage Act (Chapter 26.26 RCW), the statutes seem to use the terms parenting plan, residential schedule, or residential provisions interchangeably.
- In actions for third party custody under Chapter 26.10 RCW, the term used is "visitation."
- Chapter 13.34 RCW, dealing with dependencies, refers to custody orders, parenting plans and residential schedules when discussing the rights of the parents to have contact with the child(ren) during the dependency.

Appendix IX

LEGAL SERVICES' REPORT TO THE WASHINGTON STATE LEGISLATURE IN OPPOSITION TO ADOPTION OF DR. ROBERT PLOTNICK'S FORMULA

I. SUMMARY

Legal Services strongly opposes adoption of Dr. Robert Plotnick's formula for residential credit deviations because this formula will consistently reduce the resources available in the children's primary residence to untenable levels, especially in primary residential households whose income is at or below 200% of the Federal Poverty Level according to the Federal Poverty Guidelines. Unlike the residential credit formula recommended by the 2011 Workgroup, Dr. Plotnick's formula will consistently require "reverse transfer payments" from the parent with whom children reside a majority of the time to the other parent, even in situations where the primary residential household would be considered low-income. The language in RCW 26.19.075(d) will not consistently protect these households from the inequities in Dr. Plotnick's formula, nor will the provision recommended by the majority in Recommendation Three regarding limitations on the application of Dr. Plotnick's formula. That provision would create significant inequities for low-income parents who do not have the children a majority of the time.

This report was prepared by Kristofer L. Amblad, Staff Attorney with the Northwest Justice Project. Mr. Amblad has been the Legal Services representative for the 2007, 2011, and 2015 Workgroups.

II. REPORT RECOMMENDATIONS OPPOSED BY LEGAL SERVICES

Legal Services is strongly opposed to the following provisions recommended by a majority of the 2015 Workgroup in its report to the Legislature:

Recommendation Three:

- The residential schedule deviation should not be applied if the Self-Support Reserve is being applied to either party.

Recommendation Four:

- The formula to be used is the one developed by Workgroup member Dr. Robert Plotnick.

III. BACKGROUND

Legal Services provides legal assistance to people in the state of Washington whose household gross income is at or below 200% of the Federal Poverty Level. This financial eligibility threshold is set by the federal Legal Services Corporation and the State of

Washington's Office of Civil Legal Aid. By setting this threshold, both the federal and state governments recognize that households living under these economic circumstances face significant daily hardships in trying to make ends meet and this level of poverty significantly impacts these households' access to justice in the civil justice system. Households at this level of poverty represent a large segment of our population and there are not enough resources to assist everyone in need.

When Legal Services is asked to analyze and comment on policy proposals that will have an economic impact on the communities we serve, we will always be seeking uniform protections for people in poverty so that their ability to support themselves and their children is not reduced to an untenable level. In the context of child support and family law, we are not just concerned about custodial parent households in poverty. We are equally concerned about noncustodial parent households in poverty and most importantly, we are concerned about children in poverty.

In child support law, there has already been excellent work done to protect noncustodial parent households in poverty through the Legislature's adoption of the Self-Support Reserve. The Self-Support Reserve is a far more effective tool to protect noncustodial parents in poverty than the residential credit deviation. Legal Services has been a strong proponent for the the Self-Support Reserve and other low-income protections found in RCW 26.19.065, like the 45% net income cap on a noncustodial parent's income available for a support obligation. In this Workgroup, Legal Services strongly supports Recommendation Seven, which will provide additional relief for noncustodial parents in poverty who have limited income and multiple child support obligations.

Throughout this process, Legal Services has been concerned about Dr. Plotnick's formula and how it would adversely affect the resources available in households where children reside a majority of the time. Legal Services also has concerns about language adopted by the majority of the Workgroup regarding limitations on the application of this formula.

IV. SCENARIOS USING DR. PLOTNICK'S FORMULA

Attached to this report you will find a spreadsheet with nine scenarios. Each scenario assumes the parents have two children and that each parent will claim one child for taxes every year for purposes of keeping the gross-income deductions in the Worksheet consistent. Under these assumptions, Legal Services determined that the Self-Support Reserve would not affect the Basic Support Obligation of a parent who has a net income of at least $1,674.00 per month ($21,750 Annual Gross or $10.46/hr @ 40 hours per week). Using $1,674 as a base net income, we ran nine scenarios where at least one parent brought home $1,674. The spreadsheet shows where the parents fall on the 2015 Federal Poverty Guidelines scale according to their household size before the transfer payment; after the transfer payment; and after application of Dr. Plotnick's formula when the noncustodial parent (NCP) has 54 overnights (14%), 73 overnights (20%), 124 overnights (34%), and 168 overnights (46%). Because the children reside a majority of the time with the custodial parent (CP) in every scenario, the custodial parent's household size is three-persons and the noncustodial parent's household size is one person according

to the Federal Poverty Guidelines. None of the parents in these scenarios would be affected or protected by the Self-Support Reserve.

V. WHY LEGAL SERVICES OPPOSES THESE RECOMMENDATIONS

Opposition to Recommendation Four – Dr. Plotnick's Formula

Custodial parents and the children who reside with them a majority of the time are not similarly protected by the Self-Support Reserve, Workgroup Recommendation Seven, or the other low-income protections found in RCW 26.19.065. Since the Self-Support Reserve and the other low-income protections found in RCW 26.19.065 significantly protect low-income noncustodial parent households, custodial parents in poverty and the children that reside with them a majority of the time are more adversely impacted by the residential credit deviation formula. In light of this absence of protections, Legal Services believes the State of Washington needs an equivalent to the Self-Support Reserve to protect the economic viability of a child's primary residence.

When a formula consistently reduces transfer payments to levels that will keep a custodial parent's household income at or below 200% of the Federal Poverty Level, Legal Services will strongly oppose adoption of that formula. Similarly, Legal Services will strongly oppose any deviation that would consistently require low-income custodial parents to pay noncustodial parents a "reverse transfer payment." Legal Services opposes Dr. Plotnick's formula for these reasons and we recommend the Legislature reject adoption of this formula.

The attached scenarios show that Dr. Plotnick's formula will drive low-income custodial parent households below the poverty line (200% of the Federal Poverty Level) in many cases, especially in situations where the noncustodial parent has superior resources (see Scenarios Two, Four, Six and Eight). Scenario Six in particular shows our concern with the formula. Under that scenario, the noncustodial parent nets $10,312 per month and the custodial parent nets $1,674 per month. The standard transfer payment without any deviation ($2,004) lifts the custodial parent above poverty line without significantly impacting the noncustodial parent's household income. But as Dr. Plotnick's formula is applied, it drives the custodial parent's household income significantly below the 200% Federal Poverty Level. This is not fair and directly contradicts the legislative intent expressed under RCW 26.19.001.

The scenarios also show that Dr. Plotnick's formula will consistently require custodial parents to make "reverse transfer payments" to noncustodial parents, even when the custodial parent's household resources are only slightly better than the noncustodial parent's household resources. In Scenario Three, the custodial parent may gross $42,000 per year, but this annual income places that household at 183% of the Federal Poverty Level. According to Dr. Plotnick's formula, the custodial parent in this scenario would be required to pay $99 every month to the noncustodial parent when the noncustodial parent has 168 overnights per year. The formula is even worse for a custodial parent who works full-time at the "$15 Minimum Wage" under Scenario Nine. Under this scenario, the

custodial parent's percentage of household income is significantly lower than the noncustodial parent's household income according to Federal Poverty Guidelines, even though the custodial parent makes slightly more money. At 168 overnights under this scenario, the custodial parent would be required to pay $29 per month to the noncustodial parent, an amount the custodial parent cannot afford at 141% of the Federal Poverty Level. When a custodial parent's household income is at or below 200% of the Federal Poverty Level, there is no situation where a custodial parent should be ordered to pay any money to the noncustodial parent. It is not fair; it is not just; and it directly contradicts the legislative intent expressed under RCW 26.19.001.

When these concerns were brought to the Workgroup, many Workgroup members argued two points in opposition to Legal Services' concerns. First, many argued that we should be more concerned with the money "following the child" instead of each household's economic situation. While Legal Services' appreciates some of the points behind this policy statement, it ignores the fact that the household that has the children a majority of the time is going to bear more of the child rearing expenses. The Legislature recognizes that almost all child rearing expenses do not "follow the child." In addition, most child rearing expenses are not reduced by the temporary absence of the child in the primary residence. The only expenses that are actually reduced by the temporary absence of the child are food and entertainment. We understand the counter-argument that in many of the scenarios where the noncustodial parent has significant residential time, the noncustodial parent incurs duplicate expenses (e.g. rent, utilities) or significant increases in shared expenses like food, clothing, and entertainment. This is absolutely true, which is why we are not opposed to a residential credit formula in principle. However, Legal Services cannot support a formula that would reduce the resources available in the children's primary residence to untenable levels, which is what we are seeing with Dr. Plotnick's formula.

Similarly, the Legislature has not said that the intent of the child support schedule is to have "money follow the child." Rather, the legislative intent stated in RCW 26.19.001 is "to insure that child support orders are adequate to meet a child's basic needs and to provide additional child support commensurate with the parents' income, resources, and standard of living" and that the Legislature "intends that the child support obligation should be equitably apportioned between the parents." The legislative goals are equity and meeting children's needs, with a focus on the resources of both parents. Dr. Plotnick's formula falls short of those goals.

The other argument raised by Workgroup members was in regard to Legal Services' concerns about "reverse transfer payments." Many members argued that judicial officers would still be unlikely to order reverse transfer payments like the ones we are seeing in Scenarios Three and Nine because the Workgroup is recommending the residential credit remain a discretionary deviation. That may be true, but it does not guarantee uniformity. One of the strongest arguments in favor of Dr. Plotnick's formula is the uniformity it would bring to applications of residential credit deviation. Uniformity in application is an admirable goal. But just as the supporters of Dr. Plotnick's formula are seeking uniformity in situations when the deviation is applied, Legal Services is seeking

uniformity in situations when the deviation should not be applied. If uniformity is the goal, then it should be the goal for all situations, and not just for when the formula is applied.

Opposition to Recommendation Three – Limits on Application of Dr. Plotnick's Formula

The majority of the Workgroup recommends "The residential schedule deviation should not be applied if the Self-Support Reserve is being applied to either party." This provision was proposed in an attempt to alleviate Legal Service's concerns about Dr. Plotnick's formula. Legal Services opposes this provision for two reasons. First, it would not sufficiently protect low-income custodial parent households. As seen in most of the attached scenarios, the Self-Support Reserve would not protect the low-income custodial parent households from the inequities in Dr. Plotnick's formula.

Second, this provision would create inequitable situations where a "reverse transfer payment" may be justified. For example, take the situation where a noncustodial parent only receives $721 each month in SSI and a custodial parent's gross annual income is $164,000 (similar to the economic situation in Scenario Seven). If the noncustodial parent in this situation has the children more than 30% of the time, Dr. Plotnick's formula would require a reverse transfer payment from the custodial parent. This would be equitable because of the huge disparity in household incomes and because the transfer payment would minimally affect the resources available for the children in the custodial parent's household. But if the majority's recommendation is adopted, this equitable "reverse transfer payment" cannot happen because the Self-Support Reserve applies to the noncustodial parent's income.

Instead of adopting this recommendation, Legal Services recommends the Legislature adopt provisions that better protect households where the children reside a majority of the time. For example, in New Jersey, courts presume that residential credits will not be applied when a custodial parent's household net income is at or below 200% of the Federal Poverty Level based on the household's size. *See* New Jersey Rules of Court Appendix IX-A(13)(b)(3). Legal Services strongly supports this provision.

APPENDIX – SCENARIOS USING DR. PLOTNICK'S FORMULA

Scenario	Combined net income of parties	NCP proportional share	NCP % FPL before transfer payment (1 person household)	CP % FPL before transfer payment (3 person household)	Residential Time with NCP	% time with NCP	transfer payment (residential credit applied)	NCP % FPL after transfer payment (1 person household)	CP % FPL after transfer payment (3 person household)
4	**$7,304** NCP = $5,630 CP = $1,674	77%	574%	100%	No overnight visitation	0%	$1,223.00	449%	173%
					One overnight per week	14%	$1,166.00	455%	170%
					every other weekend, 2 weeks summer, 1 week Winter	20%	$1,143.00	457%	168%
					every weekend, 2 weeks summer, 1 week Winter	34%	$811.00	491%	148%
					every weekend, 8 weeks summer, 1 week Winter	46%	$523.00	520%	132%
5	**$7,304** NCP = $1,674 CP = $5,630	23%	171%	336%	No overnight visitation	0%	$365.00	133%	358%
					One overnight per week	14%	$309.00	139%	355%
					every other weekend, 2 weeks summer, 1 week Winter	20%	$289.00	142%	353%
					every weekend, 2 weeks summer, 1 week Winter	34%	($47.00)	175%	333%
					every weekend, 8 weeks summer, 1 week Winter	46%	($334.00)	205%	316%
6	**$11,986** NCP = $10,312 CP = $1,674	86%	1051%	100%	No overnight visitation	0%	$2,004.00	847%	220%
					One overnight per week	14%	$1,921.00	855%	215%
					every other weekend, 2 weeks summer, 1 week Winter	20%	$1,887.00	859%	213%
					every weekend, 2 weeks summer, 1 week Winter	34%	$1,399.00	909%	184%
					every weekend, 8 weeks summer, 1 week Winter	46%	$978.00	952%	158%

Scenario	Combined net income of parties	NCP proportional share	NCP % FPL before transfer payment (1 person household)	CP % FPL before transfer payment (3 person household)	Residential Time with NCP	% time with NCP	transfer payment (residential credit applied)	NCP % FPL after transfer payment (1 person household)	CP % FPL after transfer payment (3 person household)
1	**$3,348** NCP = $1,674 CP = $1,674	50%	171%	100%	No overnight visitation	0%	$445.00	125%	127%
					One overnight per week	14%	$413.00	129%	125%
					every other weekend, 2 weeks summer, 1 week Winter	20%	$401.00	130%	124%
					every weekend, 2 weeks summer, 1 week Winter	34%	$214.00	149%	113%
					every weekend, 8 weeks summer, 1 week Winter	46%	$53.00	165%	103%
2	**$4,735** NCP = $3,061 CP = $1,674	65%	312%	100%	No overnight visitation	0%	$709.00	240%	142%
					One overnight per week	14%	$670.00	244%	140%
					every other weekend, 2 weeks summer, 1 week Winter	20%	$654.00	245%	139%
					every weekend, 2 weeks summer, 1 week Winter	34%	$426.00	269%	125%
					every weekend, 8 weeks summer, 1 week Winter	46%	$228.00	289%	113%
3	**$4,735** NCP = $1,674 CP = $3,061	35%	171%	183%	No overnight visitation	0%	$382.00	132%	206%
					One overnight per week	14%	$343.00	136%	203%
					every other weekend, 2 weeks summer, 1 week Winter	20%	$327.00	137%	202%
					every weekend, 2 weeks summer, 1 week Winter	34%	$99.00	161%	189%
					every weekend, 8 weeks summer, 1 week Winter	46%	($99.00)	181%	177%

Scenario	Combined net income of parties	NCP proportional share	NCP % FPL before transfer payment (1 person household)	CP % FPL before transfer payment (3 person household)	Residential Time with NCP	% time with NCP	transfer payment (residential credit applied)	NCP % FPL after transfer payment (1 person household)	CP % FPL after transfer payment (3 person household)
7	**$11,986** NCP = $1,674 CP = $10,312	14%	171%	616%	No overnight visitation	0%	$326.00	137%	635%
					One overnight per week	14%	$243.00	146%	630%
					every other weekend, 2 weeks summer, 1 week Winter	20%	$210.00	149%	628%
					every weekend, 2 weeks summer, 1 week Winter	34%	($279.00)	199%	599%
					every weekend, 8 weeks summer, 1 week Winter	46%	($700.00)	242%	574%
8	**$4,039** NCP = $2,375 CP = $1,674 ($15 Min Wage Scenario)	59%	241%	100%	No overnight visitation	0%	$558.00	184%	133%
					One overnight per week	14%	$524.00	188%	131%
					every other weekend, 2 weeks summer, 1 week Winter	20%	$511.00	189%	131%
					every weekend, 2 weeks summer, 1 week Winter	34%	$313.00	209%	119%
					every weekend, 8 weeks summer, 1 week Winter	46%	$142.00	227%	108%
9	**$4,039** NCP = $1,674 CP = $2,375 ($15 Min Wage Scenario)	41%	171%	141%	No overnight visitation	0%	$388.00	131%	164%
					One overnight per week	14%	$354.00	135%	162%
					every other weekend, 2 weeks summer, 1 week Winter	20%	$341.00	136%	162%
					every weekend, 2 weeks summer, 1 week Winter	34%	$142.00	156%	150%
					every weekend, 8 weeks summer, 1 week Winter	46%	($29.00)	174%	140%

Appendix X

NON-CUSTODIAL PARENTS' REPORT IN SUPPORT OF THE FORMULA BEING APPLIED AS A PRESUMPTIVE ADJUSTMENT

For the following reasons, two non-custodial parents dissent from the rest of the workgroup and argue that Washington State should implement a presumptive, formula-based ***residential credit*** rather than continue the use of ***residential schedule deviations*** to address shared parenting child support orders.

1) **Equity**
   As residence-based child rearing expenses are presumptive for custodial parents, they should also be presumptive for non-custodial parents. Judges can deviate from the presumptive formula ("presumptive" is NOT "automatic"), but must justify such deviations with a finding of fact. Presuming that non-custodial parents do not incur child-rearing expenses when children reside with them – as is the case under both the current law and changes proposed by the workgroup majority – is fundamentally unjust.

2) **Federal guidelines**
   Federal child support regulations require states to establish "*presumptive guidelines for child support based on specific descriptive and numeric criteria that result in the computation of an equitable support obligation*" (45 CFR 302.56). Deviations are specifically to be minimized because excessive judicial discretion results in uneven, biased, and unpredictable child support orders. The result is greater legal conflict, and a greater likelihood that child support is not paid.

3) **Accessibility for *Pro Se* parents**
   A presumptive residential credit can be incorporated into the existing online child support calculator. *Pro se* parents simply enter the number of overnights (or equivalent overnights) into the calculator and the appropriate transfer payment is computed – just as the calculator currently adjusts for insurance payments and retirement contributions. Moreover, an online calculator can automatically take into account more complicated factors like self-support reserve restrictions.

4) **Modifications and adjustments**
   With a presumptive residential credit, changes in residential time can be readily addressed via the existing adjustment mechanism whereas a residential schedule deviation can only be changed by demonstrating a "*substantial change in circumstances*." Proposed new statutory language is underlined below:

   RCW 26.09.170

(7)(a) If twenty-four months have passed from the date of the entry of the order or the last adjustment or modification, whichever is later, the order may be adjusted without a showing of substantially changed circumstances based upon:

(i) Changes in the income of the parents; or

(ii) Changes in the amount of time the children reside in each parent's home; or

(iii) Changes in the economic table or standards in chapter 26.19 RCW.

5) Office of Administrative Hearings/ DCS system

The work group has proposed writing new statutory language that allows parents to receive a residential schedule deviation via an administrative order. With a presumptive residential credit, there is no need to develop this complicated workaround – the residential credit is available to all parents requiring a child support order.